29487

(18,440.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 266.

ESTHER S. BUCHANAN, ADMINISTRATRIX OF WILLIAM B. BUCHANAN, DECEASED; ESTHER S. BUCHANAN, AND WILSON CAREY BUCHANAN, PLAINTIFFS IN ERROR,

vs.

LAURA PATTERSON, SIDNEY T. DYER, AND ELISHA DYER, JR., HER HUSBAND, ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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a

Court of Appeals of Maryland.

ESTHER S. BUCHANAN, Individually and as Administratrix of William B. Buchanan and Wilson Carey Buchanan,
vs.
LAURA PATTERSON and Others.

1

Filed Feb'y 17th, 1902.

In the Court of Appeals of Maryland.

ESTHER S. BUCHANAN, Administratrix, etc., *et al.*, Appellants,
vs.
LAURA PATTERSON ET AL., Appellees.

Appeal from the Circuit Court No. 2, of Baltimore City.

To the Honorable James McSherry, chief judge of said court:

The petition of Esther S. Buchanan, individually, and as administratrix of William B. Buchanan, deceased, by Archibald H. Taylor and E. P. Keech, Junior, her counsel of record, and Wilson C. Buchanan by Herbert B. Stimpson, his counsel of record, respectfully shows to your honer:

First. That as appears from the record and proceedings in this cause, the object for which this proceeding was instituted, was the distribution of a sum of money in the hands of your petitioner,

2 Esther S. Buchanan, administratrix of William B. Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, which sum of money was the net amount of two awards paid to said administratrix by the Government of the United States, on what were known as "French spoliation claims," by virtue and in pursuance of two acts of Congress of the United States approved January 20, 1885, and March 3, 1899, respectively, and certain decisions and findings of the Court of Claims made under the terms of said act of January 20, 1885, in the two cases of the ship Patapsco, Wm. Hill, master, No. 2011, and of the ship Jane, John Wallace, master, No. 381, then pending in said Court of Claims and reported to Congress in accordance with the terms of said act of January 20, 1885, by which decisions and findings said Court of Claims

3 held that said firm of S. Smith and Buchanan were the lawful holders of certain claims of the kind and amount in said decisions and findings more particularly set forth, being the claims on which the aforesaid awards were made and paid; that said firm was composed of Samuel Smith, James A. Buchanan and William B. Buchanan, all now deceased; that said William B. Buchanan, deceased, was the survivor thereof; that your petitioner Esther S. Buchanan was the administratrix of the estate of said surviving partner, William B. Buchanan, deceased, and that as such administratrix of said surviving partner of said firm, your petitioner was entitled to have from the United States the amounts of

the aforesaid claims, upon which said report, decision and findings, the Congress of the United States by said act of March 3, 1899, made certain appropriations for the payment of the aforesaid awards of the Court of Claims, and directed the payment
4 of the same to your petitioner as administratrix of William B. Buchanan, said surviving partner, "representing Smith and Buchanan," and "who was the surviving partner of the firm of S. Smith and Buchanan," respectively, upon certain terms and conditions therein set forth, among which was a certain provision to the effect that any such award should not be paid to the claimant on whose behalf the appropriation was made, until the Court of Claims shall have certified to the Secretary of the Treasury of the United States, that the personal representatives on whose behalf the awards were so made, did represent the next of kin of their decedents, and also that said claims were not held by assignment, in pursuance of which the Court of Claims did certify to the Secretary of the Treasury, with respect to the two aforesaid awards, that the said Esther S. Buchanan represented the next of kin of Wil-
5 liam B. Buchanan deceased, surviving member, or partner, of the firm of S. Smith and Buchanan, the original owner of said claims, and that the same were not held by assignment, upon which certificates, decisions and findings, the amount of said awards were paid over to your petitioner as administratrix as aforesaid, all of which facts, statutes, acts, findings, decisions, reports and certificates are more particularly set forth or referred to in the pleadings, evidence and record herein.

Second. And that subsequent to the filing of the bill of complaint in these proceedings, certain of the defendants named herein, to wit, J. Louis Smith and others, and Laura Patterson and others, have, by their respective counsel, appeared in these proceedings, and filed answers and amended answers to said bill of complaint herein, in which amended answers they have denied the right of the
6 next of kin of the said William B. Buchanan, deceased, said surviving partner, set up in said bill of complaint, and claimed under and by virtue of the terms and provisions of the acts of Congress aforesaid, to share or participate as such in the distribution of the sum of money in the hands of your petitioner, Esther S. Buchanan, as administratrix of said surviving partner, and that your petitioners, Esther S. Buchanan and Wilson C. Buchanan, are respectively, the daughter and son and the sole next of kin of the said William B. Buchanan, deceased, the aforesaid surviving partner, and as such, it is in said bill of complaint set up and claimed, and has been at all times during the course of the recovery of said award in these proceedings set up and claimed, under and by virtue of the terms and provisions of the acts of Congress aforesaid, they had the right and were entitled to participate in
7 the distribution of said sum of money, in proportion to the interest of their said ancestor, William B. Buchanan, in the property of said firm of S. Smith and Buchanan, of which firm their said ancestor was the surviving partner.

Third. And that by a decree of the circuit court No. 2 of Balti-

more city, made and passed in the above-entitled cause on the twenty-sixth day of June, 1901, it was ordered, adjudged and decreed in conformity with a preceding opinion and decree of this honorable court, appearing at length in these proceedings, that said fund in the hands of your petitioner, Esther S. Buchanan, as administratrix of William B. Buchanan, deceased, said surviving partner, be divided into two equal parts, one whereof should be distributed among the descendants of Samuel Smith, deceased, in being on the third day of March, 1899, and the personal representatives of such

8 of them as may have died since said date, and the other whereof should be distributed among the descendants of James A. Buchanan, deceased, in being on said third day of March, 1899; and it was also further adjudged and decreed therein, that the next of kin of the said William B. Buchanan, deceased, said surviving partner, as such, are not entitled to share in the distribution of the aforesaid fund, and thereby your petitioners, Esther S. Buchanan and Wilson C. Buchanan, as decedents and next of kin of William B. Buchanan, deceased, were denied all right and titled to share or participate in the distribution of said fund, according to the right and claim so as aforesaid set up and maintained by them; and that from said judgment and decree of said circuit court No. 2 of Baltimore city, your petitioners, and each of them, did appeal to this honorable court; and that this honorable court did, by its decree made and passed herein on said appeal,

9 on the thirtieth day of January, 1902, for reasons set forth in an opinion on said day filed, affirm said decree of the circuit No. 2 of Baltimore city, passed herein as aforesaid, and did thereby particularly and finally deny to your said petitioners, Esther S. Buchanan and Wilson C. Buchanan, being the next of kin of the said William B. Buchanan, deceased, as aforesaid, the right to share and participate in the distribution of said fund in the hands of your petitioner, Esther S. Buchanan, as administratrix of William B. Buchanan, deceased, said surviving partner, wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or of a statute, or of a commission held under the United States, and particularly the construction of the acts of Congress of January 20, 1885, and of March 3, 1898, hereinbefore referred

10 to, and the decision of this honorable court was against the title, rights, privileges or exemptions specially accorded to and claimed by your petitioners under such clause of said Constitution, treaty, statute, or commission of the United States.

Fourth. That your petitioners are advised and therefore allege, that by virtue of the matters and facts herein set forth, they are entitled to have this cause heard and their rights and title to share and participate in the distribution of the fund in the hands of your petitioner, Esther S. Buchanan, as administratrix of William B. Buchanan, deceased, said surviving partner, determined by the Supreme Court of the United States on a writ of error directed to this court.

Wherefore your petitioners pray that they may be allowed a writ

of error from the Supreme Court of the United States directed
11 to the court of appeals of Maryland, touching the matters in these proceedings in this petition set forth, and the matter of the title, right, privilege or exemption so as aforesaid accorded to and claimed by your petitioners under the clause of said Constitution, treaty, statute, or commission of the United States, hereinbefore referred to, which has been denied to them by the decree of this honorable court.

Second. And that the decision and decree of this honorable court against your petitioners in the matter herein complained of, may be reversed.

Third. And that your petitioners may have such other and further relief as — their case may be fit and proper.

And this they will ever pray etc.

ARCHIBALD H. TAYLOR,
E. P. KEECH,
HERBERT B. STIMPSON,
Counsel for Petitioners.

12 Filed Feb'y 17th, 1902.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals of the State of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said court of appeals of the State of Maryland before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Esther S. Buchanan, administratrix of William B. Buchanan deceased, Esther S. Buchanan, and Wilson Carey Buchanan, appellants and Laura Patterson, Sydney T. Dyer, Elisha Dyer Jr., Virginia A. Smith, executrix of Louis Smith deceased, Mary Coles Carter, Sally Carter, Robert Smith Carter, Carry Ann
13 Fink, Rudolph Fink, Kate Prather Nicholas, Sarah Nicholas, Mary Coles Carter, administratrix *d. b. n. set. a.* of Samuel Smith deceased, Mary Coles Carter administratrix of Peter Carter Smith deceased, Richard P. Buchanan, Esther B. Tyson, James W. Tyson, Laura B. Wainwright, J. Mayhew Wainwright, Clement C. Smith, Eugene Lentilhon Jr., Ellen Buchanan, Marie Buchanan, Charles Buchanan, the unknown next of kin and personal representatives and distributees of Mary B. Smith who married John Mansfield, any and all unknown next of kin and distributees claiming by under or through William B. Buchanan deceased, as the said James A. Buchanan deceased, or the said Samuel Smith deceased, and the unknown personal representatives next of kin and distributees of Hetty Cary Martin and H. Newell Martin, and each of them, both now deceased, and Esther S. Buchanan, administratrix *d. b. n., c. t. a.*, of James A. Buchanan deceased, appellees wherein
14 was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the

decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Esther S. Buchanan administratrix of William B. Buchanan deceased, Esther S. Buchanan and Wilson Carey Buchanan as by their
15 complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief
(Seal's place.) Justice of the United States, the 7th day of
16 February in the year of our Lord one thousand nine hundred and two.

JAS. W. CHEW,
Clerk of the Circuit Court of the United States for the District of Maryland.

Allowed by—
JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

17 Filed February 17th, 1902.

In the Supreme Court of the United States.

ESTHER S. BUCHANAN ET AL. vs. LAURA PATTERSON ET AL. } From the Court of Appeals of Maryland.

Now comes, Esther S. Buchanan, individually and as administratrix of William B. Buchanan, deceased, and Wilson Cary Buchanan, by Archibald H. Taylor, Edward P. Keech, Junior, and Herbert B. Stimpson, their counsel of record, and assign error in the decree of the court of appeals of Maryland, heretofore on January 30, 1902, entered in these proceedings, as follows:

First. For that by the aforesaid decree of the court of appeals of the State of Maryland, being the highest court of the State of Maryland, wherein a decision in the above proceedings in the matter now complained of, could be had, said court of appeals of Maryland did finally deny to the said Esther S. Buchanan and the said
18 Wilson Cary Buchanan, any and all right, as next of kin of William B. Buchanan, deceased, to share or participate in the distribution of the fund in the hands of said Esther S. Buchanan, as administratrix of William B. Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, being the net amount of two French spoliation awards paid to said Esther S. Buchanan as the administratrix of said surviving partner, by the Secretary of the Treasury of the United States, upon the certificate of the Court of Claims of the United States, declaring and adjudicating among other things, that said Esther S. Buchanan as such administratrix, did represent the next of kin of William B. Buchanan, deceased, surviving member, or partner, of the firm of S. Smith and Buchanan, the original owner of said claims, which said certificate was made and issued by said Court of Claims in pursuance of the provisions
19 of an act of Congress approved March 3rd, 1899, by virtue of the terms of which, two certain appropriations were made to said Esther S. Buchanan, administratrix of William B. Buchanan, deceased, "representing Smith and Buchanan," and "who was the last surviving partner of the firm of S. Smith and Buchanan," respectively, by which act Congress did ratify and adopt the findings and decisions of the Court of Claims of the United States made in pursuance of a previous act of Congress approved January 20, 1885, in the two cases of the ship "Patapsco," William Hill, master, No. 2011, and of the ship "Jane," John Wallace, master, No. 381, lately pending therein, and previously reported to Congress in accordance with the terms of said act of January 20, 1885, whereby said Court of Claims did find, adjudicate, decide and report to Congress, among other things, that for the reasons in said report stated, said
20 firm of S. Smith and Buchanan was "an original suffer-" within the meaning of said acts of Congress, and was of right entitled to have from the United States the sums of money afterwards appropriated by Congress for the benefit of said firm, and that said firm was composed of Samuel Smith, James A. Buchanan and William B. Buchanan, all now deceased, of whom the said William B. Buchanan was the survivor; but that notwithstanding the provisions and terms of the aforesaid acts of Congress, and the aforesaid certificates, judgments, decisions, findings and reports of the Court of Claims, said court of appeals of Maryland did declare and finally adjudge and decree, that said firm of S. Smith and Buchanan was composed of Samuel Smith, and James A. Buchanan, only, and that said William B. Buchanan was not a member of said firm, and was not an "original sufferer" within the meaning of the acts of Congress referred to, and that
21 said Esther S. Buc-anan and Wilson Cary Buchanan, the next of kin of William B. Buchanan, deceased, were not entitled, as such, to share or participate in the distribution of the

aforesaid fund, and did finally direct and decree the distribution of the same among the next of kin of Samuel Smith, deceased, and of James A. Buchanan, deceased, thus excluding the next of kin of William B. Buchanan, deceased, as such, from the distribution of said fund, contrary to the terms and provisions of the acts of Congress aforesaid, and the acts, judgments, decrees and decisions of the Court of Claims of the United States, and the title, rights, privileges and exemptions accorded to and claimed by the next of kin of William B. Buchanan, deceased, thereunder.

Second. For that by the aforesaid decree of the court of appeals of the State of Maryland, being the highest court of the State
22 of Maryland, wherein a decision in the above proceedings, in the matter now complained of, could be had, said court of appeals of Maryland did finally deny to the said Esther S. Buchanan and to the said Wilson Cary Buchanan, any and all right, as next of kin of William B. Buchanan, deceased, to share or participate in the distribution of the fund in the hands of said Esther S. Buchanan, administratrix of William B. Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, in proportion to the interest of their said ancestor, William B. Buchanan, deceased, in the property of said firm of S. Smith an- Buchanan, contrary to the title, rights, privileges and exemptions accorded to and claimed by said Esther S. Buchanan and said Wilson Cary Buchanan, as next of kin of said William B. Buchanan, deceased, under the said act of Congress of March 3, 1899, by virtue of which said moneys
23 were paid to said Esther S. Buchanan as administratrix of William B. Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, as in the record in these proceedings more particularly mentioned and set forth.

Third. For that by the aforesaid decree of the court of appeals of the State of Maryland, being the highest court of said State of Maryland, wherein a decision, in the above proceeding, in the matter now complained of, could be had, said court of appeals of Maryland, did finally deny to the said Esther S. Buchanan, and to the said Wilson Cary Buchanan, any and all right, as next of kin of William B. Buchanan, deceased, to share or participate in the distribution of the fund in the hands of said Esther S. Buchanan, administratrix of William B. Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, in proportion to the interest of their said an-
24 cestor, William B. Buchanan, deceased, in the property of said firm of S. Smith and Buchanan, contrary to the findings, decisions, judgments and decrees of the Court of Claims in the two causes in the first assignment of error referred to, which court was, by the terms and provisions of said two acts of Congress, of January 20, 1885, and of March 3, 1899, respectively, vested with full and sole power, authority and jurisdiction to hear, determine, report and adjudicate upon the matters and things therein referred to, and particularly, among others, the matters and things in said first assignment of error set forth, in pursuance of which exclusive duty, power, authority and jurisdiction, so as aforesaid conferred upon said Court of Claims, said matters and things were, among others, decided, de-

termined and adjudicated by said Court of Claims, and said sums of money were directed by Congress out of its bounty to be paid to said Esther S. Buchanan as administratrix of William B.
25 Buchanan, deceased, surviving partner of the firm of S. Smith and Buchanan, as in the record in these proceedings more particularly mentioned and set forth, and contrary to the right, title, privileges and exemptions accorded to and claimed by said Esther S. Buchanan and said Wilson Cary Buchanan, as next of kin of William B. Buchanan, deceased, thereunder.

Wherefore said Esther S. Buchanan, individually, and as administratrix of William B. Buchanan, deceased, and Wilson Cary Buchanan, pray that said final judgment and decree of said court of appeals of Maryland be reversed, and that the error herein complained of may be rectified.

And that they may have such other and further relief as to their case may be necessary.

And this they will ever pray, etc.

ARCHIBALD H. TAYLOR,
EDWARD P. KEECH, JR.,
H. B. STIMPSON,
Solicitors.

26 Filed February 17th, 1902.

UNITED STATES OF AMERICA, *ss:*

To Laura Patterson, Sidney T. Dyer and Elisha Dyer, Junior, her husband; Virginia A. Smith, executrix of J. Louis Smith, deceased; Mary Coles Carter, Sally Carter, Robert Smith Carter, Cary Ann Fink and Rudolph Fink, her husband; Kate Prather Nicholas, Sarah Nicholas, Mary Coles Carter, administratrix *d. b. n., c. t. a.*, of Samuel Smith, deceased; Mary Coles Carter, administratrix of Robert Carter Smith, deceased; Richard P. Buchanan, Esther B. Tyson and James W. Tyson, her husband; Laura B. Wainwright and J. Mayhew Wainwright, her husband; Eugene Lentilhon, Junior; Clement C. Smith, Ellen Buchanan, Marie Buchanan, Charles Buchanan, the unknown next of kin and personal representatives and distributees of Mary B. Smith, who married John Mansfield; any and all unknown next of kin and distrib-
27 utees claiming by, under, or through the said William B. Buchanan, deceased, or the said James A. Buchanan, deceased, or the said Samuel Smith, deceased, and the unknown personal representatives, next of kin, and distributees of Hetty Cary Martin and H. Newell Martin and each of them, both now deceased, and Esther S. Buchanan, administratrix *d. b. n., c. t. a.*, of James A. Buchanan, deceased, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of Maryland, wherein Esther S. Buchanan, individually, and as adminis-

tratrix of William B. Buchanan, deceased, and Wilson Cary Buchanan, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered
28 against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James McSherry, chief judge of the court of appeals of Maryland, this seventh day of February, in the year of our Lord one thousand nine hundred and two.

JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

Service of copy of within citation is hereby admitted.

A. W. MACHEN,
ARTHUR W. MACHEN, JR.,
Solicitors for Laura Patterson, Sidney T. Dyer and Elisha Dyer, Junior, Her Husband.

February 7th, 1902.

FRANK P. CLARK,
29 *Solicitor for Mary Coles Carter, Sally Carter, Robert Smith Carter, Cary Ann Fink and Rudolph Fink, Her Husband; Kate Prather Nicholas and Sarah Nicholas, Virginia A. Smith, Executrix of James Smith, Deceased; Mary Coles Carter, Adm. d. b. n., c. t. a., of Samuel Smith, Deceased; Mary Coles Carter, Admr. of Robert Carter Smith, Deceased.*

February 7th, 1902.

D. ESTE FISHER,
Solicitor for Laura B. Wainwright and J. Mayhew Wainwright, Her Husband.

February 7th, 1902.

ESTHER S. BUCHANAN,
Administratrix d. b. n., c. t. a., of James A. Buchanan, Deceased, in Proper Person.

February 7th, 1902.

FRANK P. CLARK,
Solicitor for Charles Buchanan and Eugene Lentilhon, Jr., Infant Defendants, under Order of Court.

Feb'y 8, 1902.

30 STATE OF MARYLAND, } *To wit:*
City of Baltimore, }

I hereby certify that on this thirteenth day of February, 1902, there personally appeared before the subscriber a notary public of the State of Maryland in and for the city of Baltimore aforesaid, Edward L. Bash, and he made oath in due form of law that he did on said thirteenth day of February 1902, deliver a true copy of within citation to Marie Buchanan, one of the persons to whom the same is addressed, as therein appears.

EDWARD L. BASH.

Subscribed and sworn to before the undersigned the day and year first above written.

As witness my hand and notarial seal.

(Seal's place.) HARRY L. PRICE,
Notary Public.

31 Record. No. —.

In the Court of Appeals of Maryland.

LAURA PATTERSON, SIDNEY T. DYER and ELISHA DYER, JR., Her Husband,
vs.
ESTHER S. BUCHANAN, Adm'x, and Others.

J. LOUIS SMITH and Others
vs.
SAME.

Two appeals in one record from the circuit court No. 2 of Baltimore city.

Filed August 8th, 1900.

A. W. Machen, Arthur W. Machen, Jr., Frank P. Clark, for appellants.

Taylor & Keech, H. B. Stimpson, D. K. Este Fisher, for appellees.

32 Two appeals in one record from the circuit court No. 2 of Baltimore city.

Bill of Complaint.

(Filed 17th August, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN, an Individual; ESTHER S. BUCHANAN, Administratrix of the Estate of William B. Buchanan, Deceased, Last Surviving Partner of S. Smith and Buchanan, and Esther S. Buchanan, Administrator *d. b. n., c. t. a.*, of James A. Buchanan, Deceased, Complainants,

versus

WILSON C. BUCHANAN, RICHARD P. BUCHANAN, ESTHER B. TYSON and James W. Tyson, Her Husband; Laura B. Wainwright and J. Mayhew Wainwright, Her Husband; Eugene Littlehorn, Jr., an Infant; Clement C. Smith, Ellen Buchanan, Marie Buchanan, Charles Buchanan, an Infant; Robert Carter Smith, Administrator *d. b. n., c. t. a.*, of Samuel Smith, Deceased; Robert Carter Smith, an Individual; Sally Carter, Mary Coles Carter, Robert Smith Carter, Cary Ann Fink and Rudolph Fink, Her Husband; Kate Prather Nicholas, Sarah Nicholas, Sidney Dyer and Elisha Dyer, Jr., Her Husband; Laura Patterson, J. Louis Smith, the Unknown Next of Kin and Personal Representatives and Distributees of Mary B. Smith,
33 Who Married John Mansfield; Any and All Unknown Next of Kin and Distributees Claiming by, under, or through the said William B. Buchanan, Deceased, or of the said James A. Buchanan, Deceased, or the said Samuel Smith, Deceased, and the — Unknown Personal Representatives, Next of Kin, and Distributees of Hettie Cary Martin and H. Newell Martin and Each of Them, Now Both Deceased, Defendants.

Bill of Complaint.

To the Honorable Henry Stockbridge, the judge of said court:

Your oratrix, Esther S. Buchanan, individually and as administratrix of the estate of William B. Buchanan, deceased, and as administratrix *d. b. n. c. t. a.* of James A. Buchanan, deceased, by Taylor and Keech, her solicitor-, now files this, her bill of complaint against the defendants herein named, and complaining shows to your honor:

First. That your oratrix is the daughter of the late William B. Buchanan, deceased, and that she has heretofore been appointed administratrix of his estate by the orphans' court of Baltimore city, as appears from a certified copy of the letters of administration issued to her, and herewith filed, marked "Complainants' Exhibit A."

Second. That your oratrix's decedent the said William B. Buchanan, during his lifetime was a member of the firm of S. Smith &

Buchanan, of this firm the other members were Samuel Smith and James A. Buchanan, father of said William B. Buchanan, both of whom are now deceased; and that the said William B. Buchanan did outlive his said copartners, and was the last surviving member of said firm or copartnership of S. Smith & Buchanan.

Third. That heretofore by an act of Congress of January 20th, 1885, the Congress of the United States referred to the Court of Claims of the United States, the ascertainment of claims of American citizens for spoiliations committed by the French prior to July 31st, 1801 and that in pursuance of said act of Congress and as administratrix of the said William B. Buchanan the last surviving member of said firm of S. Smith and Buchanan, your oratrix did present and urge before said Court of Claims on behalf of said firm certain claims of the class described in said act and commonly known as "French spoiliation claims;" and that upon the finding of said Court of Claims, Congress, by act of March 3rd, 1899, did make an appropriation to pay certain of said claims, and among others did award to your oratrix two claims in term- following:

34 "On the ship Jane, John Wallace, master, Esther S. Buchanan, administratrix, representing Smith and Buchanan..... $11,660 20

"On the ship Patapsco, William Hill, master, Esther S. Buchanan, administratrix of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased..... 25,056 00

the value of the cargo shipped by said firm."

And that said moneys have been paid over to your oratrix as administratrix of the estate of William B. Buchanan, deceased, amounting in the total to..... $36,716 21

Fourth. And that as appears from the administration account of your oratrix, heretofore passed by your oratrix in the orphans' court of Baltimore city, a certified copy of which is herewith filed, marked "Complainants' Exhibit B" your oratrix has in her hands for distribution among the persons properly entitled to the same the sums of $22,629.47, after the payment of all costs and charges incidental to the collection of said fund, and the costs in the orphans' court of Baltimore city, wherein said administration was had as aforesaid.

Fifth. That under the acts of Congress relative to the same and the decisions of the Supreme Court of the United States, of the Court of Claims of the United States, and of other tribunals before which causes involving questions concerning the distribution of such claims and funds as the present have come, your oratrix is advised that she holds said fund for the benefit of and for distribution among, not only the next of kin, of her own decedent, the said William B. Buchanan, but also the next of kin of the other partners of said firm of S. Smith & Buchanan, to wit: Samuel Smith and James A. Buchanan, in the proportions and according to the laws of distribution which your honor may hold to be proper in this cause.

Sixth. That Robert Carter Smith has heretofore been appointed administrator *d. b. n. c. t. a.* of Samuel Smith deceased, by the orphans' court of Baltimore city, and that your oratrix has heretofore been appointed administratrix, *d. b. n. c. t. a.* of James A. Buchanan, deceased.

Seventh. That the next of kin of the said Willam B. Buchanan living at the date of the passage of the act of Congress directing the payment of the above-mentioned claims, to wit: March 3rd, 1899, were and are now, your oratrix Esther S. Buchanan and her brother Wilson C. Buchanan who now resides in the city of Columbus, State of Ohio, who are the only surviving children of the said William B. Buchanan.

Eighth. That the next of kin of the said James A. Buchanan deceased, living at the date of the passage of the act of Congress, directing the payment of the above-mentioned claim, to wit: March 3rd, 1899, were and are now, as follows:

The said James A. Buchanan had numerous children all of whom are now dead and of whom only two died leaving issue or descendants. These were

35 1. William B. Buchanan the father of your oratrix, now deceased, who left two children.

(*a.*) Your oratrix Esther S. Buchanan.

(*b.*) One son Wilson C. Buchanan, hereinbefore mentioned—now deceased.

2. Robert Buchanan who had issue as follows:

(*a.*) James A. Buchanan, the younger, a son who married and died leaving issue as follows:

1. Richard P. Buchanan who is now living in Cincinnati, in the State of Ohio.

2. Esther Buchanan, a daughter, who married and is now the wife of James W. Tyson, both of whom are now living at South Stafford, in the State of Vermont.

3. Laura Buchanan, a daughter, who married and is now the wife of J. Mahew Wainright both of whom are now living at Rye-on-the-Sound, Long Island, in the State of New York.

4. Rosa Buchanan, a daughter, now deceased, who married Eugene Lentilhon and who died leaving surviving her one son Eugene Lentilhon, Jr. an infant who is now living with his father at Bay Shore, Long Island, in the State of New York.

(*b.*) Eliza Buchanan, a daughter of Robert Buchanan, now deceased who married —— Smith, and who died leaving surviving her one son Clemment C. Smith, now living at Wheeling, in the State of West Virginia.

(*c.*) Ellen Buchanan a daughter of Robert Buchanan, who is now living unmarried at Bay Shore, Long Island, in the State of New York.

(*d.*) William M. Buchanan, a son of Robert Buchanan, now deceased, who married and died leaving surviving him two children.

1. Marie Buchanan, a daughter, now residing in Baltimore city, in the State of Maryland.

2. Charles Buchanan, a son an infant, now residing in the city of Baltimore.

Ninth. That the next of kin of the said Samuel Smith, deceased, living at the date of the passage of the act of Congress, directing the payment of the above-mentioned claims, to wit: March 3rd 1899, were and are now according to the information and belief of your oratrix, as follows:

Samuel Smith married Margaret Spear both of whom are now deceased, and he left five children.

1. John Spear Smith, a son, who married Cary Ann Nicholas by whom he had seven children, Margaret, Samuel, Mary, Louis, Robert Carter, Wilson Cary and Thomas Jefferson.

2. Louis Smith the son of Samuel Smith died without issue.

3. Laura Smith, the daughter of Samuel Smith, married Christopher Hughes, to whom were born Charles and Margaret, both of whom died without issue.

4. Sidney Smith, a daughter, married Edward Patterson,
36 now both deceased, to whom were born six children, Samuel, Edward, Robert, Margaret, Sidney and Laura.

5. Mary B. Smith, a daughter of Samuel Smith, married John Mansfield, and with her said husband removed from this country to England, and there died. According to the information of your oratrix, said Mary B. Smith Mansfield, had eleven children, James John Smith, Margaret, Samuel, Charlotte, Henrietta, William, Rose, Emily, Horatio, Isabella and Charles Edward whether or not said Mary B. Smith Mansfield had any other children, and whether any of the above-named children are now living or if dead whether they have left descendants your oratrix has no information, and no means of ascertaining.

(*a.*) Margaret, daughter of John Spear Smith married Robert H. Carter, to whom were born three daughters, Mary Coles Carter and Sally Carter, now living in Catonsville, Baltimore county, Maryland, Margaret, now deceased, and one son, Robert Smith Carter, who is now living at Hopkinsville, in the State of Kentucky.

(*b.*) Samuel Smith, son of John Spear Smith, Wilson Cary Smith, son of John Spear Smith, Thomas Jefferson Smith, son of John Spear Smith, died without issue.

(*c.*) Mary Smith, daughter of John Spear Smith married Samuel Nicholas, both of whom are now deceased, she had three children, Cary Ann Nicholas, who married Rudolph Fink, and is now living with her husband at Crescent Hill, Jefferson county, Kentucky, Kate Prather Nicholas, and Sarah Nicholas, both of whom are now living at Catonsville, Baltimore county, Maryland.

(*d.*) J. Louis Smith, son of John Spear Smith married Jane Kerr, both of whom are now living at Topping, in the State of Virginia.

(*e.*) Robert Carter Smith, son of John Spear Smith is now living at Catonsville, Baltimore county, Maryland.

(*f.*) Samuel, Edward and Robert, sons, and Margaret, daughter of Sidney Patterson, and Edward, her husband, died without issue.

(*g.*) Sidney, daughter of Edward Patterson and Sidney his wife, married William Turner, and died, leaving one daughter, Sidney

Turner, who is now the wife of Elisha Dyer, Jr., both of whom are now living at Newport in the State of Rhode Island.

(*h.*) Laura Patterson, daughter of Edward Patterson and Sidney, his wife, is now living unmarried, in the city of Baltimore.

Tenth. That your oratrix is informed that both James A. Buchanan and Samuel Smith, deceased, left wills: but your oratrix is advised and therefore alleges that the distribution of said fund under the terms of the act of Congress making the appropriation for the payment of said claims, is to be made directly among the nearest of kin of the respective sufferers living at the date of the appropriation, to wit: March 3rd, 1899, irrespective of the fact tha the sufferers may have left a will.

Eleventh. That your oratrix is informed, and does verily believe that the persons herein named, are all of the next of kin of
37 Samuel Smith and William B. Buchanan, all deceased, living at the time of the passage of the act of Congress aforesaid although there may be other persons unknown to your oratrix who may lay claim on your oratrix to participate in the distribution of said fund, and that your oratrix is in doubt as to the proportion in which said beneficiaries should properly participate in the respective shares of their ancestors in said fund.

Twelfth. That according to the information and belief of your oratrix, the said Samuel Smith, James A. Buchanan and William B. Buchanan, were equal copartners, but a claim has been made on your oratrix by Robert Carter Smith one of the distributees of Samuel Smith, and a party defendant herein, wherein he asserts that his ancestor, the said Samuel Smith, had a one-half interest in the property of said copartnership, and that therefore, the next of kin of the said Samuel Smith are entitled to have for distribution among them, one-half of the fund now in the hands of your oratrix for distribution; but your oratrix is informed and does verily believe that distribution of said fund should be made in three equal parts among the next of kin of the three partners in said firm of S. Smith and Buchanan.

Thirteenth. That according to the information of your oratrix her brother, Wilson C. Buchanan, one of the beneficiaries participating in said fund, and one of the defendants in these proceedings, made an assignment of his interest in said claim, previous to the passage of said act of Congress directing the payment of the same, to wit: March 3d, 1899, to Mrs. Hetty Cary Martin, wife of H. Newell Martin and that the said Mrs. Hetty Cary Martin died some years ago, and that subsequent to her death, her husband, the said H. Newell Martin, filed in the orphans' court of Baltimore city, his petition, alleging the death of his wife, without issue and leaving no debts, and praying that all of her personal property might devolve upon him in accordance with the act of assembly in such cases made and provided, and that thereupon the said orphans' court of Baltimore city, after due proceedings, did pass its final order directing that the title to all the personal property of Mrs. Hetty Cary Martin devolve and pass to her husband, the said H. Newell Martin; and that subsequent to that time, the said H. Newell Martin

removed from this country to England and there died, before the 3rd day of March, 1899; and that your oratrix does not know whether title to the interest of the said Wilson C. Buchanan in said fund ever passed under said assignment to the said Hetty Cary Martin under the terms of the act of Congress for the payment of said claims; and if so she does not know whether title to the same ever passed to the said H. Newell Martin by virtue of the order of the orphans' court hereinbefore referred to; your oratrix is also in doubt as to the name or names of the persons who may in law be vested with title to the same, and authorized to assert said assignment against the portion of the fund now in her hands distributable to the said Wilson C. Buchanan, and your oratrix therefore, for her own protection desires to make parties defendant to this bill the unknown personal representatives, next of kin and distributees of H. Newell Martin and Hetty Cary Martin, both deceased.

38 Ninth. And that by reason of the facts hereinbefore set forth your oratrix is in doubt to whom and in what proportions she should pay and distribute the sum of money in her hands as aforesaid, and she is advised and therefore alleges, that a distribution of the same can only be had under the order of a court of equity in a manner adequate to insure her own protection in the future.

To the end therefore:

1. That this honorable court will assume jurisdiction of the fund in the hands of your oratrix as administratrix as herein set forth and that it will direct and supervise the distribution of the same among the parties whom the court may find to be entitled to participate therein according to the proportion and rule which this court may declare to govern the same.

2. And for such other further relief, &c.

May it please your honor to grant unto your oratrix a writ of subpœna addressed to Marie Buchanan of Baltimore city, Charles Buchanan, an infant, of Baltimore city, Mary Coles Carter and Sallie Carter, both of Baltimore county, Kate Prather Nicholas and Sarah Nicholas both of Baltimore county, Robert Carter Smith of Baltimore county, Robert Carter Smith administrator *d. b. n. c. t. a.* of Samuel Smith, deceased, and Laura Patterson of the city of Baltimore, and also to grant to your oratrix an order of publication against Wilson C. Buchanan of Columbus, in the State of Ohio, Richard P. Buchanan of Cincinnati, in the State of Ohio, Esther B. Tyson and James W. Tyson, her husband of South Stafford, in the State of Vermont, Laura B. Wainwright and J. Mayhew Wainwright her husband, of Rye-on-the-Sound, Long Island in the State of New York, Eugene Lentilhon, Jr., an infant of Bay Shore, Long Island, in the State of New York, Clemment C. Smith of Wheeling in the State of West Virginia, Ellen Buchanan of Bay Shore Long Island, in the State of New York, Robert Smith Carter of Hopkinsville, in the State of Kentucky, Cary Ann Fink and Rudolph Fink, her husband of Jefferson county in the State of Kentucky, J. Louis Smith of Topping, in the State of Virginia, next of kin and the unknown personal representatives and distributees of Mary B. Smith a

daughter of Samuel Smith, who married John Mansfield and removed to England, Sidney Dyer and Elisha Dyer Jr. her husband of Newport in the State of Rhode Island, and any and all unknown next of kin and distributees, claiming by, under or through the said William B. Buchanan, deceased, or the said James A. Buchanan, deceased, or the said Samuel Smith, deceased, and the unknown personal representatives, distributees and next of kin of Hetty Cary Martin and H. Newell Martin and each of them, both now deceased, commanding and giving notice to them and each of them to be and appear in this honorable court on a day or days certain to be named therein to show cause, if any they have, why a decree should not be passed as prayed.

As in duty bound etc.

ESTHER S. BUCHANAN, *Adm'x.*

Witness:
C. D. McCAULEY.

[SEAL.]

TAYLOR & KEECH,
Solicitors for Complainant.

39 STATE OF MARYLAND, *County of Washington,* } *To wit:*

I hereby certify that on the twelfth day of August, 1899, there personally appeared before the subscriber, a notary public of the State of Maryland, in and for the county aforesaid, Esther S. Buchanan, the complainant named in the aforegoing bill of complaint, and she did make oath in due form of law that the matters and facts therein contained are true to the best of her knowledge and belief.

As witness my hand and notarial seal.

C. D. McCAULEY, *N. P.*

COMPLAINANTS' EXHIBIT A.

(Filed with bill of complaint.)

THE STATE OF MARYLAND, *Baltimore City,* } *sc:*

The subscriber, register of wills for Baltimore city, doth hereby certify that it appears by the records in his office that letters of administration, of all the goods, chattels, credits and personal estate of William B. Buchanan, deceased, was on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and eighty-five, granted and committed unto Esther S. Buchanan, who was then and there appointed administratrix of said deceased.

Bond $74,000.00. Said letters are still in force and unrevoked.

(Large seal.) In testimony whereof, I hereunto subscribe my name and affix the seal of my office, this eleventh day of August, in the year of our Lord, eighteen hundred and ninety-nine.

Test:

STEPHEN R. MASON,
Register of Wills for Baltimore City.

COMPLAINANTS' EXHIBIT B.

(Filed with bill of complaint.)

BALTIMORE CITY, *sct:*

The First Account of Esther S. Buchanan, Administratrix of William B. Buchanan, Deceased.

This accountant charges herself, with the amount of French spoliation claims under act of Congress of Mc'h 4, 1899, paid to her as administratrix of William B. Buchanan, deceased, last surviving partner of Smith and Buchanan,

40	Arising out of ship "Jane" Wallace, master	11,660 21	
	Arising out of ship "Patapsco" (Wm. Hill, master)	25,056 00	
			$36,716 21

And she craves allowance as follows:

Letters, &c	3 60	
Certificate stamp, &c	4 33	
Frank P. Clark and J. E. Sunnus pr. order ct. Oct. 12, '85	12,233 74	
Register's fees for this ac., copy order ct., &c.	5 75	
Taylor & Keech prof. services as per order of ct	100 00	
This accountant's com. on $20,000.00, @ 7%	1,400 00	
This accountant's com. on $16,716.21, @ 2%	334 32	
Payments, &c	$14,086 74	
Balance due the estate in cash	22,629 47	
Estate accounted for	$36,716 21	

BALTIMORE CITY, *ss:*

On this 27th day of July, 1899, came Esther S. Buchanan, adm'x of William B. Buchanan, and made oath on the Holy Evangely of Almighty God that the aforegoing account is just and true as stated and that she has paid or secured the payment of every sum or sums of which she craves an allowance, which after examination, is passed by order of the orphans' court.

Test: STEPHEN R. MASON,
Register of Wills for Baltimore City.

STATE OF MARYLAND, } ss:
Baltimore City,

I, Stephen R. Mason, register of wills, and by law, keeper of the seal and of the records of the original papers of the orphans' court for Baltimore city, do hereby certify, that the aforegoing is a true and full copy of the first administration account of William B. Buchanan, late of said city, deceased, taken from the original filed and kept in the office of register of wills for Baltimore city.

In testimony whereof I hereunto subscribe my name and
[L. S.] affix the seal of said court and office this 28th day of July, in the year of our Lord eighteen hundred and ninety-nine.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

41 COMPLAINANTS' EXHIBIT C.

(Filed with bill of complaint.)

STATE OF MARYLAND, } sc:
Baltimore City.

The subscriber, register of wills for Baltimore city, doth hereby certify that it appears by the records in his office that letters of administration, *de bonis non* with the will annexed of all the goods, chattels, credits and personal estate of James A. Buchanan, deceased, was on the twenty-third day of March in the year of our Lord one thousand eight hundred and ninety-one granted and committed unto Esther S. Buchanan who was then and there appointed administratrix *de bonis non* with the will annexed of the said deceased.

Bond $11,000.00. Said letters are still in force and unrevoked.

In testimony whereof I hereunto subscribe my name and
[L. S.] affix the seal of my office this eleventh day of August in the year of our Lord eighteen hundred and ninety-nine.

Test:

STEPHEN R. MASON,
Register of Wills for Baltimore City.

17th August, 1899, subpœna issued for resident defendants.
17th August, 1899, order of publication against non-resident defendants filed and copy issued for publication.

Answer of Defendants Robert Carter Smith, Adm'r, &c., and Others.

(Filed 26th September, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the honorable the judge of said court:

The joint and several answers of Robert Carter Smith, administrator *d. b. n., c. t. a.*, of Samuel Smith, deceased; Robert Carter Smith, an individual; Sallie Carter, Mary Coles Carter, Robert Smith Carter, Cary Ann Fink and Rudolph Fink, her husband; Kate Prather Nicholas, Sarah Nicholas, and J. Louis Smith, defendants in this cause, to the bill of complaint of Esther S. Buchanan and others against them and others in this honorable court exhibited.

The defendants answering say*ing:*

1. That they admit the facts set out in the first clause of the said bill.

2. That they admit the facts set out in the second clause of the said bill.

42 3. That they admit the facts set out in the third clause of the said bill.

4. That they admit the facts set out in the 4th clause of the said bill.

5. That they deny that *under* the acts of Congress and decisions of the courts touching the subject of the distribution of the fund in the complainants' hands referred to in the 5th clause of the said bill are susceptible of the construction placed upon them by the complainant, to wit: That it is her right and duty to distribute to the next of kin of Samuel Smith, deceased, such portion of the said fund as may be by the court awarded to them; on the contrary your respondents respectfully insist that it is her duty to pay over the same to Robert Carter Smith, the administrator *d. b. n. c. t. a.* of Samuel Smith, who holds his appointment under and by virtue of an order of the orphans' court of Baltimore city as will appear from his letters of administration which is herewith filed marked Respondents' Exhibit A, to be by him distributed under the orders of the said orphans' court of Baltimore city to such persons as may be entitled thereto.

6. That they admit the facts set out in the 6th clause of the said bill.

7. That they neither admit nor deny the facts set out in the 7th clause of the said bill having no knowledge upon the subject.

8. That they neither admit nor deny the facts set out in the 8th clause of the said bill having no knowledge upon the subject.

9. That they admit the facts set out in the 9th clause of the said bill.

10. That they admit that both James A. Buchanan and Samuel Smith, deceased, left wills, but they deny that the fund in the hands of the complainant is distributable to the "nearest of kin of the respective sufferers living at the date of the appropriation" but they contend that so much of the said fund as may be coming to those who claim under Samuel Smith, deceased, must be paid over to Robert Carter Smith, administrator, *d. b. n. c. t. a.* of Samuel Smith, deceased, to be distributed by him under the order and direction of the orphans' court of Baltimore city, nor are your respondents prepared to admit that the expression "nearest of kin" is equivalent to the language used in the act of appropriation, to wit: the act approved March 3rd 1899, which language is as follows:—The award shall be made on behalf of the "next of kin" your respondents not being prepared to admit the expression "nearest of kin" is the equivalent of that of "next of kin."

11. That they neither admit nor deny the facts set out in the 11th clause of the said bill.

12. That in answer to the 12th clause of said bill respondents say that they expect to be able to prove in this cause that Samuel Smith, deceased, was the owner of one-half interest in the firm of Samuel Smith and Buchanan, and that the interest of James A. Buchanan and William B. Buchanan was the remaining one-half interest; this your respondents upon information and belief allege and shall ask for a decree in this cause directing the fund to be so distributed.

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13. That they neither admit nor deny the facts set out in the 13th clause of the said bill.

Wherefore these defendants pray that a decree may be entered in this cause in accordance with the claim set up in this answer and that they be allowed their reasonable costs and charges in this behalf sustained.

And as in duty bound &c.

FRANK P. CLARK,
JOHN SEMMES,
Solicitors for Defendants.

ROBERT CARTER SMITH.

STATE OF MARYLAND, } ss:
Baltimore County, }

I Harry L. Chase a notary public of the State of Maryland in and for Baltimore county, do hereby certify that there personally appeared before me on this twenty-second day of September, 1899, Robert Carter Smith, personally known to me, who made oath in due form of law that the matters and facts set forth in the foregoing answer are true to the best of his knowledge and belief.

[L. S.]

HARRY L. CHASE,
Notary Public.

Answer of Defendants Laura Patterson and Others.

(Filed 9th December, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHAN- ET AL.

The joint and several answer of Laura Patterson and Sidney Turner Dyer and Elisha Dyer, Jr., her husband, defendants, to the bill of complaint of Esther S. Buchanan, Esther S. Buchanan administratrix, *d. b. n., c. t. a.*, of James A. Buchanan, deceased, against them and other defendants in this court exhibited.

1. These defendants answering say that they believe the matters and things stated in the first, second, third, fourth, fifth, and sixth paragraphs of said bill of complaint to be true.

2. These respondents do not admit that the said Samuel Smith, James A. Buchanan and William B. Buchanan were equal copartners in said firm of S. Smith and Buchanan as in the twelfth paragraph of said bill alleged; but upon creditable information aver that the said Samuel Smith was the owner of a full one-half interest in the said firm and that the other two copartners, to wit: James A. Buchanan and William B. Buchanan together owned the other one-half interest therein.

3. These respondents admit that the said Samuel Smith, who died in or about the year 1839, had five children as stated in the ninth paragraph of the said bill, one of whom was a daughter named Sidney, who intermarried with Edward Patterson, and that of the six children of the said marriage who are named in the bill, four, namely Robert Patterson, Margaret Turner, Edward Patterson, Jr., and Samuel Smith Patterson died before the passage of the said act of Congress, approved March 3rd, 1899, and without leaving any issue; that the said Sidney, daughter of the said Mrs. Sidney Patterson and granddaughter of the said Samuel Smith, died in the lifetime of her mother, leaving as her only issue, one child, Sidney Smith Turner, who has intermarried with Elisha Dyer, Jr., and is one of these respondents. And that the said Mrs. Sidney Patterson, daughter of the said Samuel Smith, died in the year 1879, and the respondent, Laura Patterson, is her only now living child; and the said Laura Patterson and Sidney Turner Dyer are the only descendants of the said Mrs. Sidney Patterson now living, or living at the time of the passage of the said act of Congress of March 3rd, 1899.

4. These respondents further admit that the defendant, Robert Carter Smith is a son of John Spear Smith who was one of the children of the said Samuel Smith, and that Mary a daughter of the said Samuel Smith intermarried with John Mansfield, and went to England to reside.

5. These respondents admit that the fund in the said bill mentioned is distributable to the next of kin of the several members of the said firm of S. Smith and Buchanan, living at the date of the appropriation or passage of the act of Congress aforesaid, and should be paid and distributed to and among them according to their respective shares by the said plaintiff.

6. And these respondents pray that the said fund may be distributed according to law in this cause and that in such distribution due regard may be had to the legal rights of them the said Laura Patterson and Sidney Turner Dyer, respectively.

And these respondents pray to be allowed their reasonable costs.

A. W. MACHEN,
ARTHUR W. MACHEN, JR.,
Sol'rs for Respondents.

Petition of Plaintiff for Appointment of Guardian ad Litem for Charles Buchanan and Eugene Lentilhon, Jr., Infant Defendants, and Order of Court Thereon.

(Filed 15th December, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the Honorable Henry Stockbridge, judge of said court:

The petition of the complainant herein respectfully shows unto your honor:

45 That among the parties to the above-entitled cause are Charles Buchanan, of the city of Baltimore, who has been duly summoned herein, and Eugene Lentilhorn Jr., of Bay Shore, Long Island, in the State of New York, against whom an order and notice of publication has been duly published in accordance with its terms, and that both of said defendants are infants, under the age of twenty-one years, and by reason of such infancy, they and each of them are unable to appear in this suit and make answer to the bill herein.

Wherefore your petitioner prays your honor to pass an order appointing a guardian *ad litem* for said minor defendants, with power to act for them in the prosecution of this cause.

And for such other and further relief.

And as in duty bound etc.

TAYLOR & KEECH,
Solicitors for Petitioner.

Order of Court on Aforegoing Petition.

(Filed 15th December, 1899.)

Ordered by the circuit court No. 2 of Baltimore city this 15th day of December, 1899, on the foregoing petition, that George W. Spicer,

Esquire, be, and he is hereby appointed guardian *ad litem* in the above-entitled cause, of Charles Buchanan, of the city of Baltimore, and of Eugene Lentelhon, Jr., of Bay Shore, Long Island, in the State of New York, both of whom are infant defendants therein, with power to appear in said cause for said infants and make answer to the bill of complaint in their names.

HENRY STOCKBRIDGE.

Answer of Charles Buchanan and Eugene Lentelhorn, Jr., Infant Defendants, by George W. Spicer, Their Guardian ad Litem.

(Filed 15th December, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

The answer of Charles Buchanan and Eugene Lentelhon Jr., infant defendants in the above-entitled cause by George W. Spicer, Esquire, their guardian *ad litem* to the bill of complaint in said cause, respectfully shows:

That being infants they can neither admit nor deny the allegations of said bill of complaint and they therefore demand strict proof thereof and submit their rights to the protection of this honorable court.

GEORGE W. SPICER,
Guardian ad Litem.

46 *Decree Pro Confesso Against Certain Defendants.*

(Filed 15th December, 1899.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

The following-named defendants, that is to say: Wilson C. Buchanan, Richard P. Buchanan, Esther B. Tyson, James W. Tyson, Laura B. Wainwright, J. Mahew Wainwright, Clement C. Smith, Ellen Buchanan, Marie Buchanan, the unknown next of kin, personal representatives of Mary B. Smith, who married John Mansfield, any and all unknown next of kin and distributees claiming by under or through William B. Buchanan or James A. Buchanan, deceased, or Samuel Smith, deceased, and the unknown personal representatives, next of kin and distributees of Hetty Cary Martin, and H. Newell Martin, both now deceased, and each of them, having been duly summoned, or by order of publication, notified to appear to the bill of complaint in these proceedings, and having failed to appear thereto according to the exigency of the writ and notice given to them:

It is thereupon this 15th day of December, 1899, ordered, adjudged and decreed that the complainant is entitled to relief in the premises, and that the bill of complaint be and it is hereby taken *pro confesso* against said defendants. But because it doth not certainly appear to what relief the plaintiff is entitled it is further ordered and adjudged that one of the examiners of this court take testimony to support the allegations of the bill.

HENRY STOCKBRIDGE.

15th December, 1899, general replication to answer of defendants as filed.

19th December, 1899, petition of plaintiff for leave to take testimony and order of court thereon granting the same filed.

Petition of J. Louis Smith to Correct Misnomer and Order of Court Thereon.

(Filed 30th March, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the honorable the judge of said court:

The petition of J. Louis Smith respectfully shows to your honor:

That in the bill and answer in this case, Louis Smith is named as one of the defendants having an interest in the fund in court in course of distribution.

That this is a misnomer and should be J. Louis Smith, the
47 petitioner being the person entitled to the interest in the fund and the person intended to be made defendant as aforesaid.

Your petitioner prays therefore that the bill and answer may be amended, striking out Louis Smith as one of the defendants and substituting your petitioner J. Louis Smith as such defendant.

And your petitioner will ever pray &c.

FRANK P. CLARK,
Solicitor for J. Louis Smith.

Assent of Complainants' Solicitors Annexed to Aforegoing Petition.

We assent to the amendment as prayed in the foregoing petition

Order of Court on Aforegoing Petition and Assent.

(Filed 30th March, 1900.)

In the Circuit Court No. 2 of Baltimore City.

It is hereby ordered this 30th day of March 1900, that the amendment of the bill and answer in this case as prayed for in the foregoing petition be allowed and the bill and answer stand so amended.

GEORGE M. SHARP.

Petition of J. Louis Smith, Adm'r d. b. n., c. t. a., of Samuel Smith, Deceased, to be Substituted a Defendant in Place of Robert Cart- Smith, Adm'r, &c.; Exhibit Therewith and Order of Court Thereon.

(Filed 7th April, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHAN- ET AL.

To the honorable the judge of said court:

Your petitioner, J. Louis Smith, one of the defendants in this cause, respectfully shows to the court that on the 13th day of February 1900, Robert Carter Smith, adm. of Samuel Smith, one of the defendants in this cause, died, and that on the 9th day of March 1900, your petitioner was duly appointed by the orphans' court of Baltimore city, adm. *d. b. n. c. t. a.* of the said Samuel Smith, as fully appears from the copy of his letters of administration filed herewith.

Wherefore your petitioner prays that he, as administrator *d. b. n. c. t. a.* of Samuel Smith, be substituted for the said Robert
48 Carter Smith, administrator *d. b. n. c. t. a.* of Samuel Smith, as one of the defendants herein.

And your petitioner will ever pray etc.

J. LOUIS SMITH,
Adm. d. b. n., c. t. a., of Samuel Smith,
By FRANK P. CLARK,
His Solicitor.

Exhibit Filed with Aforegoing Petition.

(Filed 7th April, 1900.)

THE STATE OF MARYLAND, *Baltimore City,* } *sc:*

The subscriber, register of wills for Baltimore city doth hereby certify that it appears by the records in his office that letters of administration, *de bonis non* with the will annexed of all the goods, chattels credits and personal estate of Samuel Smith deceased, was on the 9th day of March in the year of our Lord one thousand nine hundred granted and committed unto J. Louis Smith who was then and there appointed administrator *de bonis non* with the will annexed of the said deceased.

In testimony whereof, I hereunto subscribe my name and
[L. S.] affix the seal of my office this 5th day of April in the year of our Lord nineteen hundred.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

Order of Court Passed on Aforegoing Petition and Exhibit.

(Filed 7th April, 1900.)

Ordered on the aforegoing petition and exhibit by the circuit court No. 2 of Baltimore city on this 7th day of April, 1900, that J. Louis Smith, administrator *d. b. n. c. t. a.* of Samuel Smith, be and he is hereby made a defendant in this cause in lieu of Robert Carter Smith administrator *d. b. n. c. t. a.* of Samuel Smith, deceased.

PERE L. WICKES.

Petition of Laura Patterson and Others for Leave to File an Amended Answer and Assent, and Order of Court Thereon.

(Filed 19th April, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN, Adm'x, *et al.*
vs.
WILSON C. BUCHANAN ET AL.

To the honorable the judge of said court:

The petition of Laura Patterson, Sidney T. Dyer and Elisha Dyer, Jr., her husband, parties defendant in the above-entitled cause, respectfully shows:

49 That since the filing of the petitioners of their joint and several answer to the bill of complaint in this cause, the petitioners have learned that at the time of the spoliations by the French, in the said bill mentioned, the firm of S. Smith and Buchanan consisted solely of Samuel Smith and James A. Buchanan; and that William B. Buchanan was not at that time a member of said firm, and was not admitted into the firm until long afterward.

Wherefore your petitioners respectfully pray the court that leave may be granted unto them to file their amended answer, herewith exhibited, in accordance with the said newly discovered and material facts.

And as in duty &c.

A. W. MACHEN,
ARTHUR W. MACHEN, JR.,
Solicitors for Petitioners.

Passage of above order assented to April 19, 1900.

TAYLOR & KEECH,
For Complainants.

Order of Court.

Ordered this 19th day of April, 1900, upon the above petition of Laura Patterson, Sidney Turner Dyer, and Elisha Dyer, Jr., her husband, defendants, that leave be granted as prayed to the said defendants to file their amended answer in this cause.

GEORGE W. SHARP.

Amended Answer of Laura Patterson and Others.

(Filed 19th April, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Amended answer.

The joint and several answer of Laura Patterson, Sidney T. Dyer, and Elisha Dyer, Jr., her husband, to the bill of complaint of Esther S. Buchanan; Esther S. Buchanan, administratrix of William B. Buchanan, deceased, and Esther S. Buchanan, administratrix *d. b. n. c. t. a.* of James A. Buchanan, deceased, against them and other defendants in this court exhibited.

These defendants, answering, say:—

1. That they believe the matter and things alleged in the first paragraph of said bill of complaint to be true.

2. That by the act of Congress of January 20th, 1885, the Congress of the United States, referred to the Court of Claims of the
50 United States, the ascertainment of claims of American citizens for spoiliations committed by the French prior to July 31st, 1801, with a proviso that such findings of the Court of Claims should not be binding either upon the United States or the claimant; and that in pursuance of the said act of Congress and with the consent and approbation of these respondents, the complainant did present before the said Court of Claims certain claims for losses of the class described in said act of Congress, sustained by the firm of S. Smith and Buchanan from spoiliations by the French; and that the Court of Claims did thereupon make a report to Congress sustaining the validity of the said claims urged by the complainant before the Court of Claims, and that Congress by act of March 3rd 1899, did make an appropriation to pay the said awards and findings of the Court of Claims, in the terms following:—

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby authorized and directed to pay out of any money in the Treasury not otherwise appropriated, to claimants in this act named, the several sums appropriated herein, the same being in full for, and the receipt of the same to be taken and accepted in each case as a full and final discharge of their respective claims, namely:

French Spoiliation Claims.

To pay the finding of the Court of Claims for indemnity for spoiliation by the French prior to July 30th, 1801, under the act entitled 'An act to provide for the ascertainment of claims of American

citizens for spoliations committed by the French, prior to the 31st day of July 1801:' *Provided*, That in all cases where the original sufferers were adjudicated bankrupts, the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in cases of individual claimants shall not be made until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the courts which granted the administrations, respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards namely

.....

.....

on the ship Jane, John Wallace master, namely, Esther S. Buchanan, administratrix, representing Smith and Buchanan, eleven thousand, six hundred and sixty dollars and twenty-one cents.

.....

.....

On the ship Patapsco, William Hill, master, namely,

.....

Esther S. Buchanan, administratrix of the estate of William B. Buchanan who was the surviving partner of the firm of Smith and Buchanan, deceased, twenty-five thousand and fifty-six dollars the value of the cargo shipped by the said firm."

51 3. That the firm of Smith and Buchanan, by whom the said losses were originally sustained, consisted, at the time of the said losses, of two members, and no more, to wit, Samuel Smith and James A. Buchanan, each of whom owned a one-half interest in the said firm; that William B. Buchanan son of said James A. Buchanan was not at that time a member of said firm, being in fact an infant of tender years to wit, about three years of age; and that he was not admitted in the firm until long afterward, to wit: after the year 1816.

4. That in or after the year 1816, the said William B. Buchanan was admitted into the firm of S. Smith and Buchanan, and did outlive his two copartners, Samuel Smith and James A. Buchanan, and was the last surviving partner of the firm.

5. These respondents do not admit that after the said William B. Buchanan was admitted into the firm of S. Smith and Buchanan, the three members thereof, namely, Samuel Smith, James A. Buchanan, and William B. Buchanan were equal copartners; but these respondents upon credible information aver that the said Samuel Smith owned a full half interest in the said firm and that the said James A. Buchanan and William B. Buchanan together owned the other one-half interest therein.

6. These respondents believe that the matters and things stated in the fourth and sixth paragraphs of said bill are true.

7. These respondents admit that the fund in the said bill mentioned is distributable by the complainant to the next of kin, being citizens of the United States, of Samuel Smith and James A. Buchanan, the original sufferers, who were living at the date of the appropriation

or passage of the act of Congress aforesaid, and should be paid or distributed to and among them in their several shares and proportions by the said plaintiff, but the respondents do not admit that the next of kin of William B. Buchanan are, as such, entitled to any part or share in the said fund.

8. These respondents admit that the said Samuel Smith, who died in or about the year 1839 had five children as stated in the ninth paragraph of the said bill, one of whom was a daughter named Sidney, who intermarried with Edward Patterson and that of the six children of the said marriage who are named in the bill, four, namely, Robert Patterson, Margaret Turner, Edward Patterson, Jr. and Samuel Smith Patterson, died before the passage of the said act of Congress approved March 3rd, 1899, and without leaving any issue; that the said Sidney, daughter of the said Mrs. Sidney Patterson, and granddaughter of the said Samuel Smith, died in the lifetime of her mother, leaving, as her only issue, one child, Sidney Smith Turner, who has intermarried with Elisha Dyer, Jr. and is one of these respondents, and that the said Mrs. Sidney Patterson, daughter of the said Samuel Smith, died in the year 1879, and the respondent, Laura Patterson is her only now living child; and the said Laura Patterson and Sidney Turner Dyer are the only descendants of the said Mrs. Sidney Patterson now living or living at the time of the passage of the said act of Congress of March 3rd, 1899.

52 9. And these respondents pray that the said fund may be distributed according to law in this cause and that in such distribution due regard may be had to the legal rights of them the said Laura Patterson and Sidney Turner Dyer, respectively.

And these respondents pray to be allowed their reasonable costs.

A. W. MACHEN,
ARTHUR W. MACHEN, JR.,
Solicitors for Respondents.

Petition of J. Louis Smith, Adm'r d. b. n. c. t. a. of Samuel Smith, Deceased, et al. to File Amended Answer and Order of Court Thereon.

(Filed 27th April, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN, Adm'x, *et al.*
vs.
WILSON C. BUCHANAN ET AL.

To the honorable the judge of said court:

The petition of J. Louis Smith, adm., *d. b. n. c. t. a.* of Samuel Smith, deceased, and J. Louis Smith, in his own right, Sallie Carter, Mary Coles Carter, Robert Smith Carter, Cary Anne Fink, and Rudolph Fink, her husband, Kate Prather Nicholas, parties defendant in the above-entitled cause, respectfully shows:

That since the filing *of* the petitioners of their joint and several answer to the bill of complaint in this cause, Robert Carter Smith,

one of the defendants having since died and J. Louis Smith having been appointed administrator *d. b. n. c. t. a.* of Samuel Smith, successor administrator to the said Robert Carter Smith deceased, as aforesaid, and having as such administrator *d. b. n. c. t. a.*, been made one of the defendants in this cause in the place of the said Robert Carter Smith and the petitioners having learned that at the time of the spoiliations by the French, in the said bill mentioned, the firm of S. Smith and Buchanan consisted solely of Samuel Smith and James A. Buchanan; and that William B. Buchanan was not at that time a member of said firm, and was not admitted into the firm until long afterward.

Wherefore your petitioners respectfully pray the court that leave may be granted unto them to file their amended answer herewith exhibited, in accordance with the said newly discovered and material facts.

And as in duty, &c.

FRANK P. CLARK,
Solicitor for the Petitioners.

Order of Court.

Ordered this 27th day of April, 1900, upon the above petition of J. Louis Smith, adm. *d. b. n. c. t. a.* of Samuel Smith, deceased,
53 and J. Louis Smith, in his own right, Sallie Carter, Mary Coles Carter, Robert Smith Carter, Cary Anne Fink and Rudolph Fink—her husband, Kate Prather Nicholas and Sarah Nicholas, defendants, that leave be granted them as prayed to file their amended answer in this cause.

HENRY STOCKBRIDGE.

Amended Answer of J. Louis Smith, Adm'r d. b. n. c. t. a. of Samuel Smith, Deceased, et al.

(Filed 27th April, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Amended answer.

The joint and several answer of J. Louis Smith, administrator *d. b. n. c. t. a.* of Samuel Smith, deceased; J. Louis Smith, in his own right; Sallie Carter, Mary Coles Carter, Robert Smith Carter, Cary Anne Fink, and Rudolph Fink, her husband; Kate Prather Nicholas and Sarah Nicholas, parties defendant in the above-entitled cause, to the bill of complaint of Esther S. Buchanan; Esther S. Buchanan, administratrix of William B. Buchanan, deceased, and Esther S. Buchanan, administratrix *d. b. n. c. t. a.* of James A. Buchanan, deceased, against them and other defendants in this court exhibited.

The defendants answering, say:

1. That they believe the facts set out in the first paragraph of the said bill to be true.

2. That they believe the facts set out in the second paragraph of said bill to be true, with this qualification, however, to wit: That the said William B. Buchanan did not become a member of the firm until January 1st, eighteen hundred and eighteen, and that prior to that time, to wit, the year 1818 he had no interest whatever in said firm, or in the assets thereof.

3. That by an act of Congress of January 20th, 1885, the Congress of the United States referred to the Court of Claims of the United States the ascertainment of claims of American citizens for spoliations committed by the French prior to July 31st 1801, with a proviso that such findings of the Court of Claims should not be binding either upon the United States or the claimant; and that in pursuance of the said act of Congress and with the consent and approbation of these respondents, the complainant did present before the said Court of Claims certain claims for losses of the class described in said act of Congress sustained by the firm of S. Smith and Buchanan from spoliations by the French; and that the Court of Claims did thereupon make a report to Congress sustaining the validity of the said claims urged by the complainant before the
54 Court of Claims, and that Congress by act of March 3d, 1899, did make an appropriation to pay the said awards and findings of the Court of Claims in the terms following:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay out of any money in the Treasury not otherwise appropriated, to claimants in this act named the several sums appropriated herein, the same being in full for, and the receipt of the same to be taken and accepted in each case as a full and final discharge of their respective claims, namely:

French Spoliation Claims.

To pay the findings of the Court of Claims for indemnity for spoliations by the French prior to July 30th, 1801, under the act entitled 'An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the 31st day of July, 1801" *Provided*, That in all cases where the original sufferers were adjudicated bankrupts, the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in cases of individual claimants shall not be made until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made, represent the next of kin, and the courts which granted the administrations respectively, shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards, namely:

On the ship Jane, John Wallace, master, namely: Esther S. Buchanan, administratrix, representing Smith & Buchanan, eleven thousand, six hundred and sixty dollars and twenty-one cents.

On the ship Patapsco, William Hill, master, namely:—Esther S.

Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith & Buchanan, deceased, twenty-five thousand and fifty-six dollars ($25,056), the value of the cargo shipped by said firm—

Provided, however, that any French spoliation claim appropriated for in this act, shall not be paid if held by assignment or owned by any insurance company."

4. That they believe the facts set out in the 4th paragraph of the said bill to be true.

5. That they deny that the acts of Congress and decisions of the courts touching the subject of the distribution of the fund in the complainant's hands referred to in the 8th paragraph of the said bill are susceptible of the construction placed upon them by the complainant, to wit:—that it is her right and duty to distribute to the next of kin of Samuel Smith, deceased, such portion of the said fund as may be by the court awarded to them; on the contrary your respondents respectfully insist that it is her duty to pay over the same to J. Louis Smith, the administrator *d. b. n. c. t. a.* of Samuel Smith, who holds his appointment under and by virtue of an order of
55 the orphans' court of Baltimore city, as will appear from his letters of administration, a copy of which has heretofore been filed in this cause, to be by him distributed under the orders of this court to such persons as may be entitled thereto, and they further aver that the firm of S. Smith & Buchanan, by whom the said losses were originally sustained, consisted at the time of the said losses, of two members and no more, to wit: Samuel Smith and James A. Buchanan, each of whom owned a one-half interest in said firm. That William B. Buchanan, son of James A. Buchanan, was not at that time a member of the firm, being in fact an infant of tender years, to wit, about three years of age; and that he was not admitted into the firm until January 1st, 1818.

6. They believe the facts set forth in the 6th clause of said bill to be true.

And your respondents further aver that on the 13th day of February, 1900, the said Robert Carter Smith, died, and J. Louis Smith, one of these respondents was duly appointed by the orphans' court of Baltimore city as his successor administrator *d. b. n. c. t. a.* of Samuel Smith, and the said J. Louis Smith was by an order of this court heretofore made on the 7th day of March, 1900, substituted for said Robert Carter Smith, adm. *d. b. n. c. t. a.* as one of the defendants in this cause.

7. That they neither admit nor deny the facts set out in the 7th clause of the said bill, having no knowledge upon the subject.

8. That they neither admit nor deny the facts set out in the 8th clause of the said bill, having no knowledge upon the subject.

9. That they believe the facts set out in the 9th clause of the said bill to be true, with this further allegation that since the filing of their original answer by these respondents Robert Carter Smith, has died, as has been hereinbefore fully set forth, and J. Louis Smith his successor administrator, has been substituted for him as one of the defendants in this cause.

10. That they admit that both James A. Buchanan and Samuel Smith, deceased, left wills, but they deny that the fund in the hands of the complainant is distributable to the "nearest of kin of the respective suffer-s living at the date of the appropriation" by the complainant, but they conte-d that so much of the said fund as may be coming to those who claim under Samuel Smith, deceased, must be paid over to J. Louis Smith, administrator *d. b. n. c. t. a.*, of Samuel Smith, deceased, to be distributed by him under the order and direction of this court, nor are your respondents prepared to admit that the expression "nearest of kin" is equivalent to the language used in the act of appropriation, to wit:—the act approved March 3rd, 1899, which language is as follows, "The awards shall be made on behalf of the next of kin" your respondents not being prepared to admit that the expression "nearest of kin" is equivalent to that of "next of kin."

11. They neither admit nor deny the facts set out in the 11th clause of the said bill.

56 12. That in answer to the 12th paragraph of said bill, your respondents do not admit after the said William B. Buchanan, was admitted into the firm of S. Smith & Buchanan, the three members thereof namely: Samuel Smith, James A. Buchanan and William B. Buchanan were equal copartners, but these respondents upon credible information aver that the said S. Smith continued to own a full one-half interest in the said firm and that the said James A. Buchanan and William B. Buchanan together owned the other one-half interest; and your respondents aver further that, under the proper construction of the act of Congress of March 3, 1899, the fund in court cannot be treated as assets of the firm of S. Smith & Buchanan as it existed after William B. Buchanan became a member, to wit: on January 1st 1818 and distributable among the then partners thereof, but that it must be distributed among the next of kin of Samuel Smith and James A. Buchanan, who alone constituted the firm when the claims arose, to wit: in the year 1798, and each of whom owned one-half interest therein, and that the next of kin of William B. Buchanan are not entitled to any portion thereof.

13. That they neither admit nor deny the facts set out in the 13th clause of the said bill.

Wherefore these respondents pray that a decree may be entered in this cause and the fund distributed according to law, and that they be allowed their reasonable costs and charges in this behalf sustained.

And as in duty bound &c.

FRANK C. CLARK,
Solicitor for Respondents.

Order for Appearance of Wilson C. Buchanan.

(Filed 18th May, 1900.)

In the Circuit Court No. 2 of Baltimore City, May Term, 1900.

ESTHER S. BUCHANAN
vs.
WILLIAM B. BUCHANAN ET AL.

Mr. Clerk:

Please enter my appearance for Wilson C. Buchanan, one of the defendants.

H. B. STIMPSON, *Solicitor.*

Order for Appearance of Laura B. Wainright.

(Filed 9th May, 1900.)

In the Circuit Court No. 2 of Baltimore City, March Term, 1900.

ESTHER S. BUCHANAN, &c.,
vs.
WILSON C. BUCHANAN ET AL.

Mr. Clerk:

Please enter my appearance for defendant, Laura B. Wainwright.

FISHER, BRUCE & FISHER, *Solicitors.*

57 *Depositions.*

(Filed 11th June, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

The above cause being at issue, and notice having been given me by the solicitor for the plaintiffs of a desire to take testimony in the same, I, A. de Russey Sappington one of the standing examiners of the circuit courts of Baltimore city, under and by virtue of an order of the above-named circuit court passed in said cause on the 19th day of December, 1899, met on the 19th day of December, in the year eighteen hundred and ninety-nine, at my office in the city of Baltimore, in the State of Maryland and assigned the 20th day of December in the same year at 3 o'clock in the afternoon, and the office of E. Parkin Keech, Esq., in the city and State aforesaid, as the time and place for such examination of witnesses in said cause; at which last-mentioned said time and place I attended, due notice of such meeting having been given, and proceeded in the presence of the solicitors of the respective parties to take the following depositions, that is to say:—

ESTHER S. BUCHANAN, the plaintiff in this case, produced on her own behalf, having been first duly sworn, deposeth and saith as follows, that is to say:

By the EXAMINER:

1 Q. State your name, residence and occupation?
A. Esther S. Buchanan, 1424 Park avenue, no occupation.
2 Q. Do you know the parties to this suit?
A. I know some of the parties.

By Mr. KEECH:

1 Q. You are, I believe, the daughter and administratrix of William B. Buchanan.
A. I am, and I herewith file a certified copy of the letters of administration marked "Plaintiffs' Exhibit A" heretofore filed with the bill in this case.
2 Q. When did William B. Buchanan die?
A. April 20th, 1857.
3 Q. Was William B. Buchanan during his lifetime a member of the firm of S. Smith Buchanan and if so, who were the other members of said partnership?
A. My father was a member of said firm and his other partners were my grandfather James A. Buchanan and Samuel Smith.
4 Q. Who was the last surviving partner of said firm?
A. My father outlived both my grandfather and Samuel Smith, and was the last surviving member of said firm of S. Smith and Buchanan.
58 5 Q. Did you ever urge before the Court of Claims of the United States any claims on behalf of said firm, and what was it?
A. I urged before the Court of Claims as administratrix of William B. Buchanan, as last surviving member of said firm of Smith and Buchanan, and on behalf of said firm certain claims of the class described in the act of January 20th, 1885, a certified copy of which I herewith file as "Plaintiffs' Exhibit Examiner D." Upon the finding of said Court of Claims, Congress by act of March 3rd, 1899, made an appropriation for the payment to me on behalf of the firm of S. Smith and Buchanan, of two claims amounting in the aggregate to $3,716.21; I herewith file a copy of said act as "Plaintiffs' Exhibit Examiner E."
6 Q. Have you ever filed any account of the same in the orphans' court of Baltimore city?
A. I have, and herewith file a copy of my administration account, marked "Plaintiffs' Exhibit B," which has been heretofore filed with the bill, which shows that I have for distribution among those entitled to the same, the sum of $22,629.47. After the payment of all costs and charges incidental to the collection of said fund and the costs in the orphans' court.
7 Q. For whose benefit do you hold this sum of money?
A. I am advised that under the acts of Congress to which reference has been made, I hold this fund for distribution among the

next of kin of all three of the partners of the firm of S. Smith and Buchanan to wit: Samuel Smith, James A. Buchanan and William B. Buchanan, irrespective of whether or not said partners or any of them left wills and irrespective of whether or not any letters of administration or testamentary have been issued on the estates of either of the other partners.

8 Q. Do you know whether or not any of said partners left wills?

A. My father did not. My grandfather James A. Buchan- did, and Samuel Smith did.

9 Q. Have letters of administration or testamentary been granted on the estates of James A. Buchanan and Samuel Smith?

A. Yes, I have been appointed administratrix, *d. b. n. c. t. a.* of my grandfather, James A. Buchanan as evidenced by a copy of letters of administration, which I file with the examiner as "Plaintiffs' Exhibit C," and Col. Robert Carter Smith has been appointed administrator, *d. b. n. c. t. a.* of Samuel Smith as evidenced by a copy of said letters herewith filed as "Plaintiffs' Exhibit Examiner F."

10 Q. Did William B. Buchanan leave any widow surviving him, and if so, was she living or dead March 3rd, 1899?

A. William B. Buchanan left a widow surviving him, but she died previous to March 3rd, 1899.

11 Q. What children, if any, were born to William B. Buchanan?

A. My father had nine children, five of whom died before
59 himself. These all died unmarried and leaving no issue. He left surviving him, myself, who am unmarried. My brother Wilson C. Buchanan now living in Columbus, Ohio. P. Carr Buchanan and Maria J. Buchanan, both of which latter children died previous to March 3rd, 1899, unmarried and leaving no issue.

12 Q. How many children did James A. Buchanan have born to him?

A. He had a large number. I have heard that there — eighteen, of these only two ever married.

13 Q. How many children of said James A. Buchanan were living at the time of his death?

A. Four, my father William B. Buchanan, Robert S. Buchanan, Esther S. Buchanan, and Samuel S. Buchanan, of these Esther S. Buchanan and Samuel Smith Buchanan died unmarried, and leaving no issue.

14 Q. Did any of the children of James A. Buchanan who predeceased their father, marry or leave issue?

A. To the best of my knowledge they did not. Most of them died in infancy. The only ones among these children who predeceased their father who came to mature age were Eliza S., John and James. I know that all three of these died unmarried and without issue.

15 Q. Did James A. Buchanan leave any widow surviving him?

A. He did not.

16 Q. Which children of James A. Buchanan married?

A. William B. and Robert S.

17 Q. Are they living or dead?

A. Dead. William B. Buchanan died April 20th, 1857 and Robert S. Buchanan July 7th, 1877.

18 Q. Did either of them leave a widow surviving him?

A. Yes, both of them left widows surviving them, but the widows of both died previous to March 3rd, 1899.

19 Q. You have I believe already in reply to my 11th question herein stated what children were born to William B. Buchanan.

A. I have.

20 Q. What children, if any, did Robert S. Buchanan have born to him?

A. He had several children born to him, some of whom died before himself. Those of his children who are now living or being now dead have left descendants surviving them, are as follows:

His only living child is Miss Ellen Buchanan who is now living unmarried at Bay Shore, Long island, in the State of New York.

60 Three children now dead, as follows:

James A. Buchanan, the younger, who died leaving surviving him Richard P. Buchanan, who is now living in Cincinnati, Ohio.

Esther Buchanan, who is now the wife of James W. Tyson, both of whom are now living at South Stafford, in the State of Vermont.

Laura Buchanan, now the wife of James Mayhew Wainright both of whom are now living at Rye-on-the-Sound, Long island, in the State of New York and lastly; Rosa Buchanan, who married Eugene Lentilhon. This last-named daughter died May 3rd, 1898. She left surviving her one son, Eugene Lentilhon, Jr., now living at Bay Shore, Long island, in the State of New York.

2. Eliza Buchanan, who married Walter C. Smith, and died in February, 1860, she left surviving her two children, one of whom has since died in infancy; the survivor is Clement C. Smith who is now living at Wheeling, in the State of West Virginia.

3. William B. Buchanan, who married and who died in 1891 I think. He left surviving him two children, Marie Buchanan, a daughter, and Charles Buchanan, a son, both of whom reside in Baltimore, Maryland.

21 Q. Are the persons whom you have named all of the descendants of James A. Buchanan and William B. Buchanan?

A. They are to the best of my knowledge and belief. If there are others I never heard of them and I do not believe that any such exist.

22 Q. Which of them are adults, and which infants?

A. All of them are adults except Charles Buchanan who is about 18 years of age and Eugene Lentilhon, Jr., who is two years old.

23 Q. Do you know whether or not your brother Wilson C. Buchanan ever made any assignment or attempted assignment of his interest in this fund?

A. In the lifetime of Mrs. Hetty Cary Martin the wife of the late H. Newell Martin, both of who are now dead, I was told informally and not by Mrs. Martin or any representative of hers that my brother had made an assignment to Mrs. Martin of all his interest in his

father's and grandfather's French spoiliation claim. I did not then see nor have I ever since seen the purported assignment. I do not know what its terms were in any way, nor what the consideration for it was. After the death of Mrs. Martin which occurred September 27th 1892, I received a letter from Mr. Martin stating that this claim had been transferred to him under an order of the orphans' court of Baltimore city. I herewith file a certified copy of the order to which I presume he referred as "Plaintiffs' Exhibit Examiner G."

24 Q. Is H. Newell Martin living or dead, and if so, when did he die?

A. He died in England, October 27th, 1896.

61 25 Q. Do you know whether any letters of administration have ever been taken out on the estates of either Mrs. Martin or Mr. Martin?

A. I do not know definitely, but to the best of my knowledge none have been taken out in this State.

26 Q. Did Mrs. Hetty Cary Martin or H. Newell Martin leave any children surviving them, or either of them?

A. No.

27 Q. Has any claim been made on you by any person asserting a right under the assignment about which I have been questioning you to have paid to him the share of the said Wilson C. Buchanan in the fund in your hands for distribution?

A. No sir.

28 Q. You have testified that a partnership existed between your father, William B. Buchanan, your grandfather, Mr. James A. Buchanan and the late Samuel Smith. How do you know that such partnership existed?

A. I only know from what I have been told.

29 Q. Told you by whom?

A. By the members of my family. All of this happened before I was born, so of course it is all hearsay.

30 Q. Do you know of the existence of any books of account or records of this copartnership?

A. I do not.

31 Q. Under what circumstances, if you know, was the firm dissolved?

A. I don't know under what circumstances.

32 Q. Do you know what the respective shares of the three partners in the firm's assets or profits was?

A. I have been lead to believe that they were equal partners.

(Objected to.)

33 Q. Have you any knowledge whatsoever to the contrary of this in any way, that is knowledge which would indicate that their shares were other than equal?

A. None whatever.

Cross-examination.

(By Capt. CLARK:)

1 X Q. You say in your reply to the 32nd question that you have always been lead to think that the various members of the firm of S. Smith — Buchanan were equal partners. Will you please state what facts are known to you to justify your being so led to believe?

A. No facts whatever, simply what I have heard, have been told.

2 X Q. Heard from or told by whom?

A. Older members of the family who lived at that time.

3 X Q. Please name them.

A. Mr. Smith Buchanan, my uncle, also Mr. James Buchanan, son of Mr. Robert Buchanan.

62 4 X Q. Please state specifically what Mr. James A. Buchanan said to you and when and where?

A. In Baltimore, at the time that the French claims were first spoken of and they were first put into your hands in connection with the distribution of it with regard to my brother and myself receiving two-thirds interest of it. I can't remember his words. The statement that he made was to that effect. He is now dead and died in 1895 I think.

This answer is objected to for the reason that it is hearsay testimony.

5 X Q. I propound you the same question with regard to Smith Buchanan?

A. I have no recollection of anything definite that he said. It was only in a general way that he spoke of it.

Answer objected to on the ground that it is indefinite and hearsay.

6 X Q. Do you know of your own knowledge anything at all upon this subject.

A. I do not.

7 X Q. Please give the exact days of the birth and death of your father William B. Buchanan?

A. My father was born September 9th, 1795, he died April 30th, 1857.

Redirect examination by Mr. KEECH:

1 R. D. Q. In answer to the 4th cross-question you said that Mr. James A. Buchanan, Jr. had spoken to you of the two-thirds interest of yourself and your brother in any French spoliation recovery. Do you not mean the interest of yourself and brother in the two-thirds?

(Objected to as leading.)

A. (No answer.)

2 R. D. Q. What do you mean by this expression?

(Objected to because he withdrew the question that suggests the answer.)

A. I mean exactly what I said, that is what he said at the time, that we were entitled to more than his family.

(Objected to as hearsay.)

3 R. D. Q. How?

A. Because of my father's interest as well as my grandfather's.

(Objected to as hearsay.)

General question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit or either of them or that may be material to the subject of this your examination or the matters in question between the parties? If so, state the same fully and at large in your answer?

A. Nothing.

ESTHER S. BUCHANAN.

63 Miss MARY COLES CARTER, a witness of lawful age produced on behalf of the plaintiff-, having been first duly sworn, deposes and saith as follows, that is to say:

By the EXAMINER:

1 Q. State your name, residence and occupation?

A. Mary Coles Carter, Catonsville. No occupation.

2 Q. Do you know the parties to this suit?

A. I know most of the parties. I am one of the defendants.

By Mr. KEECH:

1 Q. Is Samuel Smith, who was a member of the firm of S. Smith and Buchanan, and who was I believe your great grandfather, living or dead?

A. He died many years since.

2 Q. Did he marry and leave children, and if so, will you give those children's names?

A. He left five children as follows: John Spear Smith Louis Smith Laura Smith Sidney Smith, a daughter, Mary Buchanan Smith.

3 Q. Is the wife of Samuel Smith living or dead?

A. Dead many years since.

—. Did John Spear Smith marry. If so, whom did he marry, and are he and his wife living or dead?

A. John Spear Smith married Cary Ann Nicholas, both of whom are now dead.

5 Q. Did John Spear Smith have any children, if so, please give their names?

A. He had seven children:

1. Margaret, who married Robert H. Carter, both of whom are now dead, to whom were born several children, all of whom died before maturity except the following:

Myself, Mary Coles Carter, Sallie Randolph Carter who is named in the bill simply Sallie Carter, both of whom live in Catonsville, Md. My sister Margaret who died unmarried and leaving no issue

February 3rd, 1899, and my brother Robert Smith Carter who is now living in Hopkinsville, in the State of Kentucky.

2. Samuel Smith.

3. Wilson Cary Smith.

4. Thomas Jefferson Smith, the last three died unmarried and leaving no issue.

5. Mary, who married Samuel Nicholas, both of whom are now deceased. They left three children Cary Ann who married Rudolph Fink, both of whom are now living at Crescent Hill, Jefferson county, Kentucky, Kate Prather Nicholas and Sarah Nicholas, both of whom are living at Catonsville.

6. Louis Smith, who is now living at Topping, Virginia.

7. Robert Carter Smith, who is now living at Catonsville, Md.

64 6 Q. Is Louis Smith, the son of Samuel Smith living or dead, and if dead did he leave any issue?

A. He died many years since leaving no issue.

7 Q. Did Laura Smith, the daughter of Samuel Smith marry, is she living or dead, and if so, did she leave any children?

A. She married Christopher Hughes, both she and her husband are now dead. She had two children, Charles and Margaret, both of whom died before March 3rd, 1899, leaving no issue surviving them.

8 Q. Did Sidney Smith the daughter of Samuel Smith marry?

A. Yes, she married Edward Patterson. Both she and her husband are now dead.

9 Q. Did she leave any children?

A. Yes, six as follows:

1. Samuel.

2. Edward, and

3. Robert, sons and

4. Margaret, a daughter, all of whom died prior to March 3rd, 1899, leaving no issue.

5. Laura Patterson, who is now living in the city of Baltimore, unmarried.

6. Sidney Patterson, who married William Turner, both of whom are now dead, they left one child, a daughter, Sidney Turner, who is now the wife of Elisha Dyer, Jr., whose place of residence is Newport, Rhode Island.

10 Q. Did Mary Buchanan Smith, the daughter of Samuel Smith marry, and if so, whom?

A. Yes, she married John Mansfield who was an English subject, and who returned to England with his wife, where they both died.

11 Q. Do you know whether or not there were any children of this marriage?

A. I do know that there were eleven children who were as follows:

James, John Smith, Margaret, Samuel, Charlotte, Henrietta, William Rose, Emily, Horatio, Isabella and Charles Edwin.

12 Q. Do you know whether there were any other children?

A. I do not.

13 Q. Do you know whether these children are living or dead?
A. I do not. I have heard nothing from them for years.
14 Q. Do you know whether or not either Mr. or Mrs. Mansfield married more than once?
A. I am quite sure that neither married a second time.
15 Q. Are the persons whom you have named above as now living all of the descendants of Samuel Smith?
A. I believe them to be all the descendants of Samuel Smith. I have never heard of the existence of any others.

65 No cross-examination.

General question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit or either of them, or that may be material to the subject of this your examination, or to the matters in question between the parties. If so, state the same fully and at large in your answer?
A. No.

MARY COLES CARTER.

(The plaintiff also offers in evidence "Plaintiffs' Exhibit Examiner Nos. 1, 2, 3, 4, 5 and 6.)

ROBERT CARTER SMITH, one of the defendants in this case, produced on his own behalf, having been first duly sworn, deposeth and saith as follows, that is to say:

By the EXAMINER:

1 Q. State your name, residence and occupation.
A. Robert Carter Smith, Catonsville, Md. No occupation.
2 Q. Do you know the parties to this suit?
A. I know most of the parties.

By Mr. CLARK:

1 Q. Will you please look at the book which I now show you, and tell me what it is?

(Book introduced in evidence as Defendants' Exhibit Examiner No. 1.)
(Objected to.)

A. I recognize it. It is the private book of my grandfather, General Samuel Smith, who was the senior partner of the firm of S. Smith and Buchanan.
2 Q. Will you please state in whose custody this book has been since the death of your grandfather, General Samuel Smith?
A. It was in the custody of my father, John Spear Smith, until his death, and then taken possession of by my brother, Captain Louis Smith, who had it in his posession until about eight or nine years ago and has been in my possession ever since.

Cross-examination by Mr. KEECH:

1 X Q. Under what circumstances did your brother hand over the possession of this book to you?

A. This and other books were sent up to me from Middlesex county in Virginia, where my brother J. Louis lives to be used by my attorney in the prosecution of the French spoliation claims.

2 X Q. Whose letter book do you believe this to be?

A. The letter book of my grandfather, Samuel Smith. There is every indication of its being so.

3 X Q. As an individual?

A. Yes.

66 4 X Q. It is not in any sense the letter book of the firm of S. Smith and Buchanan?

A. My opinion is that it is not.

(Question and answer objected to as the book itself is the best evidence of what it really is.)

5 X Q. When to the best of your knowledge did the partnership or firm doing business under the name of S. Smith and Buchanan, cease to carry on active business operations?

A. It stopped when it failed.

6 X Q. What was the date of that failure?

A. I do not know the exact date except that it was in 1821.

7 X Q. It was previous then to the year 1824 to the best of your belief?

A. Yes, sir.

General question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit or either of them, or that may be material to the subject of this your examination or the matters in question between the parties. If so, state the same fully and at large in your answer.

A. No sir.

R. CARTER SMITH.

MARY COLES CARTER, a witness heretofore produced and sworn, recalled on behalf of J. Lewis Smith and others.

By Mr. CLARK:

1 Q. Miss Carter, Col. R. Carter Smith, who was the administrator of Samuel Smith, deceased, died, did he not, in February last?

A. Yes, the 13th of February, 1900.

2 Q. He was a single man, was he not?

A. Yes.

3 Q. Was he ever married?

A. Never.

4 Q. Was either his father or his mother living at the date of his death?

A. No.

5 Q. Had he any brothers or sisters living and if so, who?

A. He had brother, J. Lewis Smith, and no sisters living.

6 Q. Will you please give the names of the brothers and sisters, if any, he had who predeceased him and give the names of the children living at the date of his death, if any, of such predeceased brothers and sisters?

A. The three brothers who predeceased him were Samuel Smith; Thomas Jefferson Smith and Wilson Cary Smith all of whom died single. His predeceased sisters were, Margaret Smith, who married Robert Hill Carter and who had living at the date of the
67 death of the said Robert Carter Smith the following children, Mary Coles Carter, that is myself; Robert Smith Carter, Sallie Carter. Mrs. Carter had one other child, a daughter, who died before the said Robert Carter Smith, unmarried.

There remained but one other sister who predeceased him and left children whose name was Mary, who married Samuel Nicholas both of whom are now dead. She had three children and no more, and they all were living at the date of the death of the said Robert Carter Smith. There were Cary Ann Nicholas, who married Rudolph Finke, Kate Prather Nicholas and Sarah Nicholas, both of whom are unmarried.

Cross-examination waived.

(The defendants J. Louis Smith and others represented by Mess. Frank P. Clark and Arthur W. Machen offer in evidence the original papers and proceedings in the case known as In the matter of James A. Buchanan an insolvent debtor, late pending in the Baltimore county court, now pending in the court of common pleas of Baltimore city, and appearing on Insolvent Transfer Docket, folio 127, and the complainants hereby waived the production of the copy of the docket entries.

The defendants also offer in evidence Defendants' Exhibit- A. A. B. B. C C and D D.)

General question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit, or either of them, or that may be material to the subject of this your examination or the matters in question between the parties. If so, state the same fully and at large in your answer.

A. No.

MARY COLES CARTER.

No other witnesses being named or produced before me, I then, at the request of the solicitors of the respective parties closed the deposition- taken in said cause, and now return them closed, under my hand and seal on this — day of —— in the year of our Lord nineteen hundred, at the city of Baltimore, in the State of Maryland.

A. DE R. SAPPINGTON, *Examiner.* [SEAL.]

There are seventeen exhibits with these depositions, to wit: Plaintiffs' Exhibit- A. B & C. filed with the bill E. F & G filed with the examiner and also Nos. 1, 2, 3, 4, 5 and 6.

Defendant-' Exhibit- Examiner A A, B B, C C, & D D, and also two agreements of counsel filed as such.

A. DE R. SAPPINGTON, *Examiner.*

PLAINTIFFS' EXHIBIT D.

(Filed with depositions.)

(Public—No. 13.)

An act to provide for the ascertainment of claims of American
68 citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That such citizens of the United States, or their legal representatives, as had valid claims of indemnity upon the French government arrising out of illegal capture, detention, seizure, condemnations and confiscations prior to the ratification of the convention between the United States and the French Republic concluded on the thirtieth day of September, eighteen hundred, the ratifications of which were exchanged on the thirty-first day of July following may apply by petition to the Court of Claims, within two years from the passage of this act, as hereinafter provided; provided, that the provisions of this act shall not extend to such claims as were embraced in the convention between the United States and the French Republic concluded on the thirtieth day of April eighteen hundred and three, nor to such claims growing out of the acts of France as were allowed and paid, in whole or in part, under the provisions of the treaty between the United States and Spain concluded on the twenty-second day of February eighteen hundred and nineteen; nor to such claims as were allowed, in whole or in part, under the provisions of the treaty between the United States and France concluded on the fourth day of July eighteen hundred and thirty-one.

SEC. 2. That the court is hereby authorized to make all needful rules and regulations not contravening *to* the laws of the land or the provisions of this act, for executing the provisions hereof.

SEC. 3. That the court shall examine and determine the validity and amount of all claims included within the description above mentioned, together with their present ownership, and, if by assignee, the date of the assignment, with the consideration paid therefor; provided, that in the course of their proceedings they shall receive all suitable testimony on oath or affirmation, and all other proper evidence, historic and documentary, concerning the same; and they shall decide upon the validity of said claims according to the rules of law, municipal and international, and the treaties of the United States applicable to the same, and shall report all such conclusions of fact and law as in their judgment may effect the liability of the United States therefor.

SEC. 4. That the court shall cause notice of all petitions presented under this act to be served on the Attorney General of the United States, who shall be authorized, by himself or his assistant, to examine witnesses, to cause testimony to be taken, to have access to all testimony taken under this act, and to be heard by court. He

shall resist all claims presented under this act by all proper legal defenses.

SEC. 5. That it shall be the duty of the Secretary of State to procure, as soon as possible after the passage of this act, through the American minister at Paris or otherwise all such evidence and documents relating to the claims above mentioned as can be
69 obtained from abroad; which together with the like evidence and documents on file in the Department of State, or which may be filed in the department, may be used before the court by the claimants interested therein, or by the United States, but the same shall not be removed from the files of the court; and after the hearings are closed the record of the proceedings of the court and the documents produced before them shall be deposited in the Department of State.

SEC. 6. That on the first Monday of December in each year the court shall report to Congress, for final action, the facts found by it, and its conclusions of all cases which it has disposed of and not previously reported.

Such findings and report of the court shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimant or Congress; and all claims not finally presented to said court within the period of two years limited by this act shall be forever barred; and nothing in this act shall be construed as committing the United States to the payment of any such claims.

Approved January 20th, 1885.

PLAINTIFFS' EXHIBIT F.

(Filed with depositions.)

THE STATE OF MARYLAND, } *&c.:*
Baltimore City, }

The subscriber, register of wills for Baltimore city, doth hereby certify that it appears by the records in his office, that letters of administration, *de bonis non* with the will annexed of all the goods, chattels, credits and personal estate of Samuel Smith, deceased, was on the seventh day of April, in the year of our Lord one thousand eight hundred and eighty-five, granted and committed unto Robert Carter Smith, who was then and there appointed administrator *de bonis non* with the will annexed of the said deceased.

Said letters are still in force and unrevoked.

In testimony whereof, I hereunto subscribe my name and
[L. S.] affix the seal of my office this twenty-second day of December, in the year of our Lord eighteen hundred and ninety-nine.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

COMPLAINANTS' EXHIBIT EXAMINER No. 1.

(Filed with depositions.)

French spoliation.

In the Court of Claims.

ESTHER S. BUCHANAN, Administratrix *de bonis non* Estate of William Buchanan, Deceased,
vs.
THE UNITED STATES.
} No. 381.

70 *Petition.*

Filed November 3, '85. J. R.

Owner: Ship "Jane" and cargo.

The honorable judges of the Court of Claims:

The petition of Esther S. Buchanan respectfully shows:

I. That she is a citizen of the United States; that on the twenty-fifth day of May, in the year eighteen hundred and eighty-five, she was duly appointed and qualified by the orphans' court, of Baltimore city, Maryland, administratrix *de bonis non* of the estate of William B. Buchanan, late of Baltimore Maryland deceased, a duly authenticated copy of the record of which appointment is filed herewith, that the said Wm. B. Buchanan was a citizen of the United States and survivor of the firm of Smith & Buchanan.

II. That the ship, "Jane" of two hundred and fourteen tons burthen, a duly registered vessel of the United States, of which John Wallace was master one-half was owned by S. Smith and Buchanan and the other half by John Hollins deceased sailed upon a lawful voyage in the year seventeen hundred and ninety-eight, bound from Jamaica to Baltimore Maryland, laden with a cargo of coffee, rum and sugar, the property of the said S. Smith and Buchanan and one Edward Suise, seven-eighths of which belonged to the said S. Smith and Buchanan; that in the prosecution of said voyage she was illegally captured on or about the twenty-ninth day of July, seventeen hundred and ninety-eight, by a French privateer called La Pabo, commanded by one Bonche and carried into the port of Havana, in the island of Cuba, and said vessel and cargo disposed of by the French captors without legal sentence or decree of condemnation against the protest of the captain thereof, and thereby became a total loss to the owners thereof, that such capture, condemnation and sale was in violation of the law of nations and the treaties between the United States and France.

III. That the said S. Smith and Buchanan had a valid and admitted claim for indemnity upon the French Republic for such illegal capture, condemnation and confiscation prior to the ratification

of the convention between the United States and the French Republic, concluded on the thirtieth day of September; eighteen hundred, the ratifications of which were exchanged on the thirty-first day of July following; that this claim, as appears from the averments herein contained, was not embraced in the convention between the United States and the Republic of France, concluded on the thirtieth day of April, eighteen hundred and three; it was not a claim growing out of the acts of France, allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the twenty-second day of February, eighteen hundred and nineteen; and that it was not allowed in whole or in part under the provisions of the treaty between the United States and France, concluded on the fourth of July, eighteen hundred and thirty-one; neither said claim, nor any part thereof, has ever been paid to the said S. Smith and Buchanan, nor to the legal representatives of either of them.

71 IV. That no assignment or transfer of said claim, or any part thereof, or any interest therein, has ever been made; that said petitioner as administratrix as aforesaid, is justly entitled to the amounts hereinafter claimed from the United States, after allowing all just credits and offsets; and that the claimant, your petitioner, believes the facts as stated in this petition are true.

V. That the said vessel, at the date of the capture aforesaid, was of the value of nine thousand four hundred and eleven dollars and seventy-six cents, including the premium of insurance paid on the same, and the one-half interest of said S. Smith and Buchanan being four thousand seven hundred and five dollars and eight cents, that the proportion of the said cargo belonging to the said S. Smith and Buchanan including the premium of insurance paid on the same, was of the value of thirty-three thousand and nineteen dollars, from which deduct the amount received from the insurance company of thirteen thousand, eight hundred and forty-five dollars and fifty cents, leaves a balance of nineteen thousand one hundred and seventy-three dollars and fifty cents on account of the said cargo; that the freight was reasonably worth eight thousand four hundred and seventy dollars and fifty-eight cents, including the premium of insurance paid on the same, and the one-half interest of the said S. Smith and Buchanan being four thousand, two hundred and thirty-five dollars and twenty-nine cents making in the aggregate the sum of twenty-eight thousand one hundred and fourteen dollars and sixty-seven cents.

And your petitioner prays that the sum of twenty-eight thousand, one hundred and fourteen dollars and sixty-seven cents may be found to be due your petitioner, and that the United States is liable therefor.

WM. E. EARLE,
FRANK P. CLARK,
JOHN E. SEMMES,
Plaintiff's Attorneys.

CITY OF BALTIMORE, }
State of Maryland, } *ss:*

Before me personally appeared Esther S. Buchanan, the above-named petitioner, and made oath that the matters averred on her own personal acknowledge in the foregoing petition are true, and those stated upon information and belief, she believes to be true.

ESTHER S. BUCHANAN.

Sworn to before me this second day of November A. D. 1885.

[SEAL.] MURRAY HANSON,
Notary Public.

COMPLAINANTS' EXHIBIT EXAMINER No. 2.

(Filed with deposition.)

In the Court of Claims.

ESTHER S. BUCHANAN, Adm'x *d. b. n.* of Wm. B. Buchanan, Deceased,
vs.
THE UNITED STATES.
} French Spoliations. Nos. 381 & 525.

72 Baltimore Oct. 19th 1888 at the office of John Stewart, No. 213 St. Paul street, Baltimore, Md. Present for the plaintiffs Rob't Riddle Brown and Charles W. Russell for United States.

ESTHER S. BUCHANAN, called as a witness by the petitioner being duly sworn deposeth and saith as follows, that is to say:

Question by commissioner. State your name, age and residence?

Ans. Esther S. Buchanan; I am 43 years old; I reside at Baltimore.

1 question by petitioner's counsel. What interest, if any, have you in the subject-matter of these proceedings?

1 Ans. I am the daughter of Wm. B. Buchanan and administratrix *d. b. n.* of his estate.

2 question. State what you know of a partnership known as S. Smith and Buchanan, who were the members of it and who was the survivor?

2 Ans. The firm consisted of James A. Buchanan, my grandfather, Samuel Smith, and William B. Buchanan my father. Samuel Smith was the brother of my grandmother on my mother's side, William B. Buchanan my father was the survivor of the firm.

(Objected to as hearsay.)

3 question. State where the *this* firm was in business and when to the best of your information?

3 Ans. In the city of Baltimore during the last part of the last century and the first part of this century. I think the firm carried on business on Gay street.

4 question. State if you have ever heard of any claims the said

firm had for losses committed by the French by spoliations and where and how you heard it?

4 Ans. I have heard my father state it from my earliest recollection that he had these claims and that they would come to us if they were ever paid. I have also heard my uncle, my father's brother, Samuel Smith Buchanan speak of it.

(Objected to as hearsay.)

Cross-examination by RESPONDENT'S COUNSEL:

1 X question. In what year did the firm of Smith and Buchanan fail?

1 X Ans. I don't know.

2 X question. I suppose you know the fact, though not the time?

2 X Ans. I do.

73 General question. Do you know any other matter or thing in reference to this claim?

Ans. I do not.

ESTHER S. BUCHANAN.

There appeared before me, G. Morris Bond, a commissioner of the United States, Esther S. Buchanan, the signer of the above deposition, personally known to me, and made oath to the truth of the same this 19th day of October, 1888.

[SEAL.]

GEORGE MORRIS BOND,
United States Commissioner for Maryland.

Endorsements: Spo. 381, Esther S. Buchanan, adm'x *v.* U. S. Ship Jane, Jno. Wallace. Deposition of E. S. Buchanan. Filed Nov. 1, 1888. A true copy.

[L. SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims, this 29th day of March, A. D. 1900.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

I, Charles C. Nott, Chief Justice of the Court — Claims, certify that the foregoing attestations of John Randolph assistant clerk of said court is in due form.

CHARLES C. NOTT,
Chief Justice.

COMPLAINANTS' EXHIBIT EXAMINER No. 3.

(Filed 11th June, 1900.)

In the Court of Claims.

ESTHER S. BUCHANAN, Adm'x of William B. Buchanan, Deceased, *vs.* THE UNITED STATES. } French Spoliations. No. 381.

Ship Jane.

I hereby certify that on this — day of June 1888 before me a notary public of the State of Maryland in and for the city of Baltimore personally appeared Esther S. Buchanan who made oath in due form of law.

1st. That she is the Esther S. Buchanan to whom the orphans' court of Baltimore city did, on the 25th day of May 1885, commit letters of administration on the estate of William B. Buchanan, deceased.

2nd. That she is the daughter of the said William B. Buchanan, who was the William B. Buchanan named in the said pe-
74 tition as the surviving member of the firm of S. Smith & Buchanan which sustained heavy losses from French spoliations in the latter part of the last and the beginning of the present century; that the said William B. Buchanan died April 30th 1857; that he was the surviving member of the firm of S. Smith & Buchanan.

3rd. That she has frequently heard her father say that he had large claims against the United States on account of French spoliations growing out of the seizures of the vessels of the firm of S. Smith & Buchanan of which firm she has repeatedly heard him speak as the firm of which he was a member; that it has been the hope and expectation of her family since her earliest recollection that these claims some time or other would be paid which she is now prosecuting as administratrix *d. b. n.* aforesaid.

ESTHER S. BUCHANAN.

Test: THOS. KELL BRADFORD.
FRANK P. CLARK.

There personally appeared also at the same time Robert Carter Smith and made oath in due form of law that he is the Robert Carter Smith to whom the orphans' court of Baltimore city did on the 7th day of April 1885 commit letters of administration *d. b. n. c. t. a.* on the estate of Samuel Smith, deceased.

2nd. That he is a grandson of the said Samuel Smith who was the Samuel Smith who was the senior member of the firm of S. Smith & Buchanan which sustained heavy losses from French spoliations

in latter part of the last and the beginning of the present century; that the said Sam'l Smith died in 1839;

3rd. That John Spear Smith who was the executor of the said Samuel Smith was the father of this affiant, and that a sword which was voted to his grandfather Samuel Smith by the Congress of the United States was left under his will to his father and by him left to this infant and that he now has the said sword in his possession.

4th. That he remembers his grandfather well being about sixteen years old when he died and that he has heard him repeatedly speak of the firm of S. Smith & Buchanan, and repeatedly say that it consisted of himself, Samuel Smith, James A. Buchanan and William B. Buchanan, the exact date when the last named became a member of the firm he does not know. He further says that he has over and over again heard his grandfather Samuel Smith say that his firm of S. Smith & Buchanan and he himself individually had large claims against the U. S. Government on account of French spoliations. He has heard him also say that he Samuel Smith was interested in similar claims owned by Smith & Hollins and Smith & Spear. Also in similar claims owned by Samuel & John Smith, Jr.

Also that it has been the hope and expectation of his family from the earliest recollection that these claims some time or other would be paid which he is now prosecuting as administrator *d. b. n.* aforesaid.

R. CARTER SMITH.

Test: THOS. KELL BRADFORD.
FRANK B. CLARK.

75 There personally appeared also at the same time John E. Semmes and made oath in due form of law that he has examined the records of the orphans' court of Baltimore city and that, as shown by said records, General Samuel Smith dies in the year 1839, testate, appointing John Spear Smith his executor, that among other bequests in his will he gives the sword presented to him by the Congress of the United States to his son John Spear Smith.

That as appears by said records said John Spear Smith is dead and letters *d. b. n. c. t. a.* were granted to Robert Carter Smith on the 7th day of April 1885 upon the estate of the said General Samuel Smith for the purpose of prosecuting the French spoliation claims.

That said affiant has examined the directories of the city of Baltimore for the years 1796, 1799, 1800 and 1801 and finds that but one Samuel Smith appears in said directories who is designated as a merchant doing business in the name of S. Smith & Buchanan at No. 12 Gay street and who was also a member of the firm of Samuel and John Smith, said Samuel Smith resided at No. 37 Water street in the said city of Baltimore.

That there appears also by the records of the orphans' court of Baltimore city that James A. Buchanan died in 1840, testate; that George William Brown is the administrator *c. t. a.* that by his will he devised and bequeathed all of his property to Samuel Smith

Buchanan and that among his debts is one due by Wm. B. Buchanan, who is stated to be living at the date of this inventory in 1842.

JOHN E. SEMMES.

Test: THOS. KELL BRADFORD.
FRANK P. CLARK.

Sworn to before me the day and date aforewritten.
In testimony whereof I have hereunto affixed my official seal.

[SEAL.] THOS. KELL BRADFORD.
Notary Public.

Endorsements: No. 381 spoliation. Court of Claims. Esther S. Buchanan, adm'r'x, *vs.* United States. Ship Jane Wallace. Proof of identity of Wm. B. Buchanan and as survivor of firm S. Smith & Buchanan also proof of identity as to Samuel Smith. Filed June 15, 1888. Wm. E. Earle, Washington, D. C. A true copy.

In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims, this 29 day of March A. D. 1900.

[L. SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

76 I, Charles C. Nott Chief Justice of the Court of Claims certify that the foregoing attestation of John Randolph, assistant clerk of said court is in due form.

CHARLES C. NOTT,
Chief Justice.

COMPLAINANTS' EXHIBIT EXAMINER No. 4.

(Filed with deposition.)

In the Court of Claims.

ESTHER S. BUCHANAN, Administratrix Estate of William B. Buchanan, Deceased; William Donnell, Administrator *d. b. n., c. t. a.*, Estate of John Donnell, Deceased; Jane G. Howard and Susan S. Hoffman, Administratrices *d. b. n., c. t. a.*, Estate of Robert Gilmore, Deceased; Cumberland D. Hollins, Administrator *de bonis non* Estate of John Hollins, Deceased, vs. THE UNITED STATES.	French Spoilation.	No. 2011.

Petition.

Filed September 29, '86. J. R.

Owners, cargo, ship Patapsco.

To the honorable the judge of the Court of Claims:

The petition of Esther S. Buchanan, William Donnell, Jane G. Howard, Susan Hoffman, and Cumberland D. Hollins respectfully shows:

I. That they are citizens of the United States; that on the twenty-fifth day of May, A. D. eighteen hundred and eighty-five, the petitioner, Esther S. Buchanan was duly appointed and qualified by the orphans' court, of Baltimore city, Maryland, as the administratrix of the estate of William B. Buchanan, late of Baltimore city; that the said William B. Buchanan was the surviving partner of the firm of S. Smith & Buchanan, all citizens of the United States; that on the twelfth day of June, eighteen hundred and eighty-six, the petitioner, William Donnell, was duly appointed and qualified by the aforesaid court, as the administrator *de bonis non cum testamento annexo*, of the estate of John Donnell, late of Baltimore, a citizen of the United States; that on the twenty-ninth day of April, eighteen hundred and eighty-five, the petitioners, Jane G. Howard and Susan S. Hoffman, were duly appointed and qualified by the aforesaid court as the administratrices *de bonis non cum testamento annexo*, of the estate of Robert Gilmore late of Baltimore, deceased, that the said Robert Gilmore was the surviving partner of the firm of Robert Gilmor & Co., said firm being composed of Robert Gilmor Robert Gilmor Jr. and William Gilmore each a citizen of the United
77 States; that upon the twenty-fourth day of December, eighteen hundred and eighty-five, the petitioner, Cumberland D. Hol-

lins, was duly appointed and qualified by the aforesaid court as the administrator *de bonis non*, of the estate of John Hollins late of Baltimore, a citizen of the United States.

II. That the ship "Patapsco," of two hundred and thirty and sixty ninety-fifths tons burthen, a duly registered vessel of the United States of which Joshua William Hill was master, and owned by sundry parties, residents of Baltimore, for whom a separate petition has been drawn, sailed upon a lawful voyage in the month of November, seventeen hundred and ninety-eight, bound from the port of Baltimore, Maryland, to London, England, laden with a valuable cargo of coffee, cotton, sugar and cochineal, belonging to the following parties in the proportions herein stated, to wit:

Forty-one (41) bales of cotton, of the value of twenty hundred and ninety-six dollars and thirty-two (2,096.32) cents, owned equally by the said John Donnell and the firm of S. Smith & Buchanan. Seventy hogshead- and twelve hundred and thirty-three sacks of coffee, valued at fifty-six thousand, two hundred and ninety-five dollars and ($56,295.80) eighty cents, one-half of which was the property of S. Smith & Buchanan.

Twenty-eight (28) packages or bales of cochineal, of the value of twenty-eight thousand ($28,000) dollars, the sole property of Robert Gilmor & Co.

One hundred boxes or cases of white Havana sugar, of the value of seven thousand and twenty-three dollars and ($7,023.42) forty-two cents, the property of said John Hollins.

That in the due prosecution of the aforesaid voyage she was illegally captured on or about the seventeenth day of December, seventeen hundred and ninety-eight, by two French privateers called the Escamateur "and the Furet" both of Boulange and carried into the port of Dieppe, and both vessel and cargo condemned and sold as a good prize to the captors by the French tribunal of commerce, established and sitting at Dieppe, against the protest of the master, and became thereby a total loss to the owners thereof; that such capture, condemnation and sale was in violation of the law of nations, and the treaties between the United States and France.

III. That the said S. Smith & Buchanan, John Donnell, Robert Gilmor & Co., and John Hollins had a valid and admitted claim for indemnity against the French Republic, prior to the ratification of the treaty between the United States and the French Republic, concluded on the thirtieth day of September eighteen hundred, the ratifications of which were exchanged on the thirty-first day of July following; that this claim, as appears from the averments herein contained was not embraced in the convention between the United States and the Republic of France, concluded on the thirtieth day of April, eighteen hundred and three; that it was not a claim allowed, in whole or in part, under the provisions, of the treaty between the United States and Spain, concluded on the twenty-second day of February, eighteen hundred and nineteen; that it was not a claim allowed
or paid, in whole or in part, under the provisions of the
78 treaty between the United States and France, of the fourth of July, eighteen hundred and thirty-one; neither said claim

nor any part thereof, has ever been paid to the said S. Smith & Buchanan, John Donnell, Robert Gilmor & Co. and John Hollins, nor to the legal representatives of any of them.

IV. That no assignment or transfer of said claim, nor any interest therein, has ever been made; that said petitioners, as administrators aforesaid, are justly entitled to the amounts hereinafter claimed from the United States, after allowing all just credits and offsets; and that the claimants, your petitioners, believe the facts as stated in this petition are true.

V. That the value of the said goods and merchandise, the property of the aforesaid parties, at the date of the captive aforesaid, was of the value of sixty-five thousand two hundred and sixty-seven dollars and ($65,267.64) sixty-four cents.

And your petitioners pray that the said sum of sixty-five thousand, two hundred and sixty-seven dollars and ($65,267.64) sixty-four cents may be found due them on account hereof, and that the United States is liable therefor to wit:

Twenty-eight thousand ($28,000) dollars as administratrices of Robert Gilmore.

Seven thousand and twenty-three dollars and ($7,032.42) forty-two cents, as the administrator of John Hollins.

Twenty-nine thousand one hundred and ninety-six dollars and ($29,196.06) six cents as administratrix of William B. Buchanan.

One thousand and forty-eight dollars and ($1,048.16) sixteen cents, as the administrator of John Donnell.

WM. E. EARLE,
FRANK P. CLARK,
JOHN & DAVID STEWART,
JOHN E. SEMMES,
Plaintiff's Attorneys.

STATE OF MARYLAND, *City of Baltimore*, } ss:

Before me personally appeared Cumberland D. Hollins, one of the above-named petitioners, and made oath that the matters averred in the foregoing petition on his own personal knowledge are true, and those stated on information and belief he believes to be true.

CUMBERLAND D. HOLLINS.

Sworn to before me, this first day of October, A. D. eighteen hundred and eighty-six.

WM. H. BAYZARD,
Notary Public.

COMPLAINANTS' EXHIBIT EXAMINER No. 5.

(Filed with depositions.)

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *April* 5, 1900.

79 Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of certificates of the

Court of Claims in the case of Esther S. Buchanan, administratrix, etc., on file in this department.

In witness whereof, I have hereunto set my hand, and [L. SEAL.] caused the seal of the Treasury Department to be affixed, on the day and year first above written.

W. O. B. L. J. GAGE,
T *Secretary of the Treasury.*

L. J. S. M. G.

Court of Claims.

No. 381.

French spoliation cases.

Vessel, ship Jane.

Master, John Wallace.

In the matter of the application of Frank P. Clark, Esq., attorney of record for Esther S. Buchanan, administratrix, representing Smith and Buchanan, deceased, for a certificate of the court under the act of March 3, 1899.

The defendants having been heard thereon, this court orders that the following certificate be issued to the Secretary of the Treasury.

To the Secretary of the Treasury:

The Court of Claims hereby certifies that it appears by evidence on file in the above-entitled case that said Esther S. Buchanan on whose behalf an appropriation, or award was made by the act of March 3, 1899, entitled "An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March third, eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes," for the sum of eleven thousand six hundred and sixty dollars and twenty-one cents ($11,660.21) represents the next of kin of William B. Buchanan, the surviving member of the firm of Samuel Smith & Buchanan, deceased, the original owner of the claim upon which said award was made.

And the court further certifies that it appears on the record of the said case that at the time when the award of this court was made the said claim was not held by assignment or owned by an insurance company.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court at Washington, this 15th day of June, A. D. 1899.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

80 Court of Claims, No. 2011, French Spoliation Cases.

Vessel, ship Patapsco.

Master, William Hill.

In the matter of the application of Frank P. Clark Esq., attorney of record for Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith and Buchanan, deceased, for a certificate of the court under the act of March 3, 1899.

The defendants having been heard thereon, the court orders that the following certificate be issued to the Secretary of the Treasury:

To the Secretary of the Treasury:

The Court of Claims hereby certifies that it appears by evidence on file in the above-entitled case that said Esther S. Buchanan, on whose behalf an appropriation, or award, was made by the act of March 3, 1889, entitled "An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March third, eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes," for the sum of twenty-five thousand and fifty-six dollars ($25,056.00) represents the next of kin of William B. Buchanan, surv. part., etc., deceased the original owner of the claim upon which said award was made.

And the court further certifies that it appears on the record of the said case that at the time when the award of this court was made the said claim was not held by assignment or owned by an insurance company.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court at Washington, this 15th day of June, A. D. 1899.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

COMPLAINANTS' EXHIBIT EXAMINER No. 6.

(Filed with depositions.)

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *April* 5, 1900.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed are true copies of Treasury certificates of accounts Nos. 53239 and 53274, French spoliation claim-, in favor of Esther S. Buchanan, administratrix, etc. on file in this department.

In witness whereof, I have hereunto set my hand and [L. SEAL.] caused the seal of the Treasury Department to be affixed on the day and year first above written.

L. J. GAGE,
T. *Secretary of the Treasury.*

W. O. B.
L. J.
S. M. G.

81 *Certificate, French Spoliation Claims.*

McD.

Judicial No. 53239.

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR FOR THE STATE
AND OTHER DEPARTMENTS, *June* 26, 1899.

I hereby certify, that I have examined and settled an account between the United States and Esther S. Buchanan administratrix representing Smith and Buchanan and find that the sum of eleven thousand six hundred, sixty and $\frac{21}{100}$ dollars is due from the United States to him being amount appropriated by act of March 3, 1899 (public — No. 190), to pay the finding of the Court of Claims in his favor for indemnity for spoliation by the French prior to July 31, 1801, on the ship Jane the proofs required by said act having been duly furnished, which sum is payable from the appropriation for "payment of French spoliation claims," act of March 3, 1899. Let a warrant for the amount be remitted to her in care of Frank P. Clark attorney $11,660\frac{21}{100}$.

W. O. B.

ERNEST G. TIMME,
Auditor for the State and Other Departments,
By G. W. ESTERLY,
Deputy Auditor.

To the Secretary of the Treasury.

(Division of book-keeping and warrants.)

H.

JUN- 28, 1899.

Drawn on Washington for $11,660.21.

ELLIS H. ROBERTS,
Treasurer U. S.

DEFENDANT'S EXHIBIT EXAMINER A A.

(Filed 11th June, 1900.)

In the Court of Claims.

ESTHER S. BUCHANAN, Adm'x of William B. Buchanan, Deceased, vs. THE UNITED STATES. } French Spoliations. No. 381.

Reply of Treasury Department in the Above-entitled Case. Filed December 17, 1885.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *December* 15, 1885.

To the chief clerk U. S. Court of Claims.

SIR: In answer to the rule of the Court of Claims in the
82 cause of Esther S. Buchanan, French spoliation, No. 381, I transmit herewith duly authenticated copies of the following papers viz:

1. Register of the ship "Jane" registered at the port of Baltimore, June 15, 1797.
2. Manifest of said vessel dated June 15, 1797.

Respectfully yours, C. S. FAIRCHILD,
Assistant Secretary.

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *December* 15, 1885.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of papers on file in this department.

In witness whereof, I hereunto set my hand, and caused
[SEAL.] the seal of the Treasury Department to be affixed on the day and year first above written.

D. MANNING,
Secretary of the Treasury.

Permanent.

No. 118,
One hundred and eighteen. Cr. 8 Decem., 1801.

Vessel condemned by the French and register detained.

In pursuance of an act of Congress of the United States of America, entitled, "An act concerning the registering and recording of ships or vessels," John Hollins of the city of Baltimore State of Maryland, merchant, having taken or subscribed the oath required by the said act, and having sworn that he together with Samuel Smith and James A. Buchanan aforesaid merchants are the only owners of the ship or vessel called the Jane of Baltimore, whereof John Smith is

at present master, and is a citizen of the United States, as he hath sworn and that the ship or vessel was built at Baltimore in the State of Maryland in the year 1790 as appears by register number 230 issued at this port the 7th December 1796 now surrendered the property being transferred.

And it also appears by said register that the said ship or vessel her length is eighty-three feet six inches, her breadth twenty-four feet four inches, her depth twelve feet two inches and that she measures two hundred and fourteen tons; that she is a square-sterned ship and has a woman figure-head; and the said John Hollins having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said ship has been duly registered at the port of Baltimore.

Given under my hand and seal at the port of Baltimore
83 this fifteenth day of June, in the year one thousand seven hundred and 90 seven.

	June	15	1797	118	Ship	Jane	Jno. Hollins & Co.	214	Vessel condemned by the French at Havana Regr. detained proved 8th December, 1801.

A true copy.

[L. SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims, this 29th day of March A. D. 1900.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

I, Charles C. Nott, Chief Justice of the Court of Claims, certify that the foregoing attestation of John Randolph, assistant clerk of said court, is in due form.

CHARLES C. NOTT,
Chief Justice.

DEFENDANTS' EXHIBIT EXAMINER B B.

(Filed with depositions.)

In the Court of Claims.

ESTHER S. BUCHANAN, Administratrix Estate of William B. Buchanan, Deceased; William Donnell, Administrator *d. b. n., c. t. a.*, Estate of John Donnell, Deceased; Jane G. Howard and Susan S. Hoffman, Administracies *d. b. n., c. t. a.*, Estate of Robert Gilmer, Deceased; Cumberland D. Hollins, Administrator *de bonis non* Estate of John Hollins, Deceased,
vs.
THE UNITED STATES.

French Spoliations. No. 20111.

Reply of Treasury Department in the Above-entitled Case. Filed October 13, 1886.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *October* 12*th*, 1886.

To the honorable the chief justice and judges of the Court of Claims:

In answer to the rule of your honorable court in the case of
84 Esther S. Buchanan, adm'x, &c., against the United States, No. 2011 French spoliation, I have the honor to transmit herewith copies of the papers desired, duly authenticated under the seal of this department.

Respectfully yours, HUGH S. THOMPSON,
Assistant Secretary.

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
WASHINGTON, D. C., *October* 12*th*, 1886.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed are true copies of papers now on file in this department.

In witness whereof, I have hereunto set my hand, and
[SEAL.] caused the seal of the Treasury Department to be affixed, on the day and year first above written.

S. S. FAIRCHILD,
Acting Secretary of the Treasury.

No. 122, one hundred and twenty-two.

Secr. 21st Oct., 1804.
New owners.

Permanent.

In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registering and recording of

ships or vessels," James A. Buchanan of the city of Baltimore, State of Maryland, having taken or subscribed the oath required by the said act, and having sworn that he together with Samuel Smith and John Donnell of Baltimore aforesaid, merchants, are the only owners of the ship or vessel called the Patapsco of Baltimore, whereof Joseph Mitchell is at present master, and that the said ship or vessel was built at Rhode River in the county of Anne Arundel and State of Maryland in the year 1796 as also appears by the attestation of James Carroll under whose direction she was built.

And Daniel Delozeer, surveyor of the port, having certified that the said ship or vessel has two decks and three masts, and that her breadth — twenty-four feet ten inches, her depth — and that she measures two hundred and thirty tons, and sixty-seven ninety-fifth parts of a ton, that she is a square-sterned ship, has a round deck and no figure-head; and said James A. Buchanan having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act the said ship has been duly registered at the port of Baltimore.

Given under my hand and seal at the port of Baltimore this twenty-first day of June, in the year one thousand seven hundred and ninety-seven.

85 *Weights.*

Pts.	Coffee.			Cotton.			Sugar.
	Hhds.	Bags.	Lbs.	Bales.	Lbs.	Boxes.	Lbs.
1956	20	280	48,752				
1957	20	135	14,754				
1983						100	39,019 lbs.
1954	50	818	123,303				
1979				41	4964		
1953						335	133,439
	70	1233	186,809				172,458

Manifest of the Cargo Board the Ship Patapsco, Joshua W. Hill, Master, Bound to London.

70 hogsheads coffee	$16,777 21
1233 bags "	39,191 04
435 boxes sugar	4,000 00
41 bailes cotton	1,200 00
28 " cochineal	28,000 00
	89,168 25

BALTIMORE, *5th November*, 1798.

Sworn before R. Surviance, *D. C. M.*
230 tons
10 guns
20 men

JOSHUA W. HILL.

A true copy.

In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims, this 29th day of March A. D. 1900.

[L. SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

I, Charles C. Nott, Chief Justice of the Court of Claims, certify that the foregoing attestation of John Randolph assistant clerk of said court is in due form.

CHARLES C. NOTT,
Chief Justice.

DEFENDANTS' EXHIBIT EXAMINER C C.

(Filed with depositions.)

Samuel Smith, James A. Buchanan, and William B. Buchanan
to
Thomas Elliott and Jonathan Meridith.
} Deed of Trust.

This indenture, made this ninth day of November in the year of our Lord one thousand eight hundred and twenty, between
86 Samuel Smith, James A. Buchanan, and William B. Buchanan, all of the city of Baltimore, in Baltimore county, and State of Maryland, merchants, copartners trading under the firm of S. Smith & Buchanan, of the one part and Thomas Ellicott and Jonathan Meredith both of the city of Baltimore, aforesaid of the other part witnesseth;

That for and in consideration of the *same* of five dollars, lawful money, apiece to the parties hereto of the first part, respectively paid by the parties hereto of the second part at or before the sealing and delivery hereof, the receipt whereof the said parties hereto of the first part do hereby severally and respectively acknowledge the said Samuel Smith, James A. Buchanan, and William B. Buchanan have, and each of them hath given, granted, bargained, and sold, aliened, enfeoffed, conveyed, assigned, transferred, set over, and confirmed, and by these presents do, and each of them doth, give, grant bargain and sell, alien, enfeoff, convey, assign transfer, set over, and confirm unto the said Thomas Ellicott and Jonathan Meridith, their heirs, executors, administrators, and assigns, all and singular the real and personal estates and property of or belonging to the said Samuel Smith, James A. Buchanan, and William B.

Buchanan, in the said copartnership capacity of S. Smith & Buchanan, and all and singular the goods, wares, merchandise, chattels, and effects of every or any nature kind, or description whatsoever of or belonging to the said S. Smith & Buchanan, as copartners aforesaid, whatsoever the same is, are, or may be, and all and every the debts, claims, or sums of money due owing belonging, or payable to them, the said S. Smith & Buchanan, and all deeds, books of account, bonds, bills, notes vouchers, evidences, and writings whatsoever touching or concerning the same hereby granted and assigned estate effects, property and premises or any part thereof, and all the rights, title interest, use trust, equity of redemption, property, claim and demand whatsoever of said Samuel Smith, James A. Buchanan, and William B. Buchanan, and each of them, of in, unto, and out of the same hereby granted and assigned premises and every or any part thereof, to have and to hold, receive and take all and singular the estate and estates effects and property, goods, chattels, debts, sums of money and claims hereby conveyed, assigned, and transferred, and all benefit to be had, obtained or gained thereby or therefrom in anywise unto the said Thomas Ellicott and Jonathan Meredith, and the survivors of them and the heirs, executors, administrators and assigns of the survivor henceforth forever upon special trust and confidence nevertheless, and to, for and upon the uses and the ends, intents and purposes, and under and subject to the powers and provisos, and limitations hereinafter mentioned, expressed and declared of and concerning the same premises, and to, for, or upon no other use, trust, intent, or purpose whatsoever, and for the better enabling the parties hereto of the second part to carry into effect the trusts hereby intended to be reposed in them, the said Samuel Smith, James A. Buchanan, and William B. Buchanan, have, and each of them hath, constituted and appointed, and by these presents do, and each of them doth, constitute and appoint in their place and stead, put and dispute the said Thomas Elli-
87 cott and Jo*h*athan Meredith, and the survivor of them, and the heirs, executors and administrators of the survivor jointly and severally to be the true and lawful attornies and attorney irrevocable of the said Samuel Smith, James A. Buchanan and attorney irrevocable of the said Samuel Smith, James A. Buchanan and William B. Buchanan, and in their names or in the names of the said attorneys and trustees, or of either of them, or the legal representatives of the survivor as the case may be and require, but to the uses hereinafter expressed forthwith to demand, collect, receive, and by all lawful ways and means whatsoever, recover and get into their hands, custody, possession, and power, all and singular, the estate and estates, property chattels, effects goods merchandise, debts and sums of money hereby conveyed, assigned, and tran-ferred or meant, mentioned, and intended hereby so to be, except such parts or portions of the same as were heretofore mortgaged or conveyed in trust by the firm of S. Smith & Buchanan to William Patterson, John Donnell, and John Spear Smith, of Baltimore, aforesaid, for indemnifying them against loss on account of their endorsement of certain promissory notes to the amount of two hundred and forty thousand

dollars, passed by S. Smith & Buchanan to the president, directors and company of the Bank of the United States and from and after the twenty-first day of April one thousand eight hundred and twenty-four being the period limited for the payment of the last note, so as aforesaid endorsed by the said William Patterson, John Donnell, and John Spear Smith and passed to the president, directors, and company of the Bank of the United States, but not before, to have and receive from the said trustees, namely, William Patterson John Donnell, and John Spear Smith or the survivors or survivor of them or the legal representatives of the survivor, any residue of property so conveyed to them in trust as aforesaid or balance of proceeds therefrom arising, and which may be remaining in their hands, or power, or under their control, after discharging and satisfying therewith the objects of the trust reposed in them; and upon receipt of any property or monies hereby conveyed, assigned, and transferred, good and sufficient acquittances, and discharges for the same in whole or in part, as the case may be, and as the said Thomas Ellicott and Jonathan Meredith, or the survivor of them, or the legal representatives of the survivor may think it expedient and proper to give, to execute and deliver in trust, that the said Thomas Ellicott and Jonathan Meredith, and the survivor of them, and the heirs, executors, and administrators of the survivor shall and will use their reasonable endeavors forthwith to receive, recover, and get into their possession all and singular the estate and property hereby conveyed and assigned, except those parts or portions thereof so as aforesaid conveyed in trust by the said S. Smith and Buchanan to the above-named William Patterson, John Donnell, and John Spear Smith, and *John Spear Smith*, and shall and will, whenever they may deem it most advantageous for those interested therein, make sale and dispose of the estate and property hereby conveyed and assigned except as aforesaid, in such manner and upon such terms as they may think proper, and upon the receipt of the purchase or consideration money therefor execute to the purchaser or purchasers, good and sufficient deeds of conveyance and assignment for any estate, prop-
88 erty, and effects so disposed of, and shall and will at the period limited as aforesaid for that purpose claim and receive from the said William Patterson, John Donnell, and John Spear Smith, or the survivors or survivor of them, or their legal representatives any residue of property so as aforesaid conveyed in trust to them by the said S. Smith & Buchanan or balance of the proceeds therefrom arising then remaining under their control or in their hands after satisfying and discharging thereout the objects of such trust and from and after such sales and receipts upon trust, that the said Thomas Ellicott and Jonathan Meredith, or the survivor of them, or the heirs, executors, or administrators of the survivor shall and will after satisfying themselves thereout the amount of expenses necessarily attending the *the* execution of this trust and also a reasonable commission for their services in the premises, apply so much of the residue of the proceeds of the estate, property, effects, claims, debts, and sums of money hereby conveyed and

assigned as may be necessary to the indemnification of the legal representatives of James Calhoun, lately deceased, and of Leonard Matthews, of Baltimore aforesaid, for from, and against the payment of three promissory notes drawn by Calhoun & Matthews in favour of the said S. Smith & Buchanan and by them endorsed, one of them dated on the sixth, one on the ninth, and the other on the thirteenth day of April, one thousand eight hundred and nineteen; the first for fifteen thousand dollars, the second for twelve thousand dollars, and the third and last for fifteen thousand dollars, payable, respectively at sixty days after date, which said notes amounting to forty-two thousand dollars, were lent by the said Calhoun & Matthews to the said S. Smith & Buchanan, and were discounted for the accommodation of the latter firm at the office of discount and deposit or branch of the Bank of the United States at Baltimore aforesaid, and have been protested for non-payment and from and after such deduction, application, and payment shall and will pay, apply, distribute, and divide the residue of the proceeds arising from or by the sales of the estate and property aforesaid and the collection of the claims, debts, and the sums of money hereby assigned to and amongst all and every such of the creditors of the said S. Smith and Buchanan in their joint or copartnership capacity aforesaid rateably and proportionally, agreeably to the amount of their respective just claims as shall within fifteen months next ensuing the date hereof signify in writing their assent to the terms of this deed and the provision hereby made for them, and execute and deliver to the said Samuel Smith, James A. Buchanan, and William B. Buchanan a full and final release and discharge of and from all claims and demands against them, provided always that the proportion, part or share of such creditor or creditors, if any, of the said S. Smith & Buchanan as shall neglect, refuse or omit to execute such release and discharge as aforesaid, within the term of fifteen months of, and in the nett proceeds aforesaid shall not be distributed or divided amongst the other creditors, but shall be withheld from such distribution by the said trustees, and the proportionate part or share of the president, directors and company of the Bank of the United States therein agreeably to the amount of their claim shall
89 be paid and delivered over to them, notwithstanding their refusal, omission, or neglect to execute such release as aforesaid, and the balance of the said fund shall be by the said trustee paid over to the said S. Smith & Buchanan, or to his assigns, provided, however, that nothing herein contained shall be construed as gra-ting a right, either in law or equity, to the parties hereto of the second part or to the creditors hereby provided for to exercise any power or control over that or those part or parts, portion or portions of the estate, effects, merchandise property, or funds hereby granted, conveyed, or assigned which was or were heretofore conveyed in trust to the within-named William Patterson, John Donnell, and John Spear Smith, or any part of the same, or to claim any interest whatever therein, until the aforesaid twenty-first day of April, one thousand eight hundred and twenty-four unless the objects of the trust so as aforesaid reposed in the said William Patterson, John

Donnell, and John Spear Smith shall have been sooner satisfied and discharged; and it is hereby further agreed and understood by and between all the parties hereto that the said trustees, parties to this deed, shall not be in any manner answerable or accountable for any loss that may happen to the said trust estate and property unless from or by their own willful commission, omission, or neglect. nor shall the one of them be answerable or accountable for the acts, — the other; and the said Samuel Smith, James H. Buchanan, and William B. Buchanan, for themselves, their heirs, executors, and administrators, do hereby covenant, promise, grant, and agree to and with the said Thomas Ellicott and Jonathan Meredith, their heirs, executors, administrators, and assigns, that the said Samuel Smith, James A. Buchanan and William B. Buchanan, and their heirs shall and will at any time or times hereafter, at the reasonable request of the said parties hereto of the second part, or either of them, or their legal representatives, *do* make execute acknowledge and deliver all such further and other acts deeds conveyances, assignments, or transfer- in the law as shall or may be advised or devised and required for the confirmation of these presents, or for the better and more perfectly assuring, conveying, and assigning unto the said Thomas Ellicott and Jonathan Meredith, their heirs, executors, and administrators as joint tenants upon the terms and for the uses hereinbefore expressed and declared, all or any of the estate, effects, property, claims, and funds hereby mentioned to be conveyed, assigned, and transferred according to the purport, true intent, and meaning hereof. In testimony whereof the said Samuel Smith, James A. Buchanan, and William B. Buchanan have hereunto subscribed their names and affixed their seals on the day and year first above written.

S. S. SMITH. [SEAL.]
J. A. BUCHANAN. [SEAL.]
W. B. BUCHANAN. [SEAL.]

Signed, sealed, and delivered in the presence of
W. G. WETHERALL.
WILLIAM SPEAR.

90 STATE OF MARYLAND, } *ss:*
Baltimore County, }

Be it remembered, and it is hereby certified that on this ninth day of November, in the year of our Lord one thousand eight hundred and twenty, before the subscribers, two justices of the peace of the State of Maryland in and for Baltimore county aforesaid, personally appears Samuel Smith, James A. Buchanan, and William B. Buchanan, the parties of the first part named in the foregoing indenture or instrument of writing, and do severally acknowledge the same to be their respective act and deed.

In testimony whereof we hereunto subscribe our names on the day and year aforesaid.

SAM'L FARNANDIS.
JOHN MALLORY.

Rec'd for record the 23rd day of January, 1821 same day recorded and examined.

J. WM. GIBSON, *Clk.*

I hereby certify that the foregoing is a true copy taken from Liber W. G. No. 157 folio 351, etc., one of the land records of Baltimore county (now city) In testimony whereof I have hereto set my hand and affixed the seal of the superior court of Baltimore city this 10th day of November A. D. 1888.

[SEAL.]

JAS. BOND,
Clerk of the Superior Court of Baltimore City.

DEFENDANTS' EXHIBIT EXAMINER D D.

(Filed with deposition.)

Court of Claims.

ESTHER S. BUCHANAN, Administratrix,
vs.
THE UNITED STATES.
} French Spoliations. No. 381. Ship Jane.

Evidence of Claimant.

(Copies from original and official papers on file in the Department of State.)

Memorial.

To the honorable the commissioners appointed under the 11th article of the treaty of amity, settlement, and limits between the United States and His Catholic Majesty, concluded at Washington on the 22nd February, 1819:

The memorial of Thomas Ellicott and Jonathan Meredith, trustees of Samuel Smith, James A. Buchanan, and William B. Buchanan, by deed of trust bearing date the 9th November, 1820, all being of the city of Baltimore and State of Maryland, respectfully represents that the said Samuel Smith and James A. Buchanan, trading under the firm of S. Smith & Buchanan, were in the year 1797, owners
91 of one moiety or half, of the American ship Jane of Baltimore; John Hollins, also of said city of Baltimore, owning the other part; that in the month of December of the same year, they, the said S. Smith & Buchanan, a certain Edmond Suire, also of said city, and the said S. Smith, of said firm of S. S. & Buchanan, having freighted the whole of said ship Jane, then under the command of John Wallace loaded her with a cargo of dry goods, flour, &c., and despatched her to the West Indies; that in the prosecution of said voyage the said ship Jane had arrived at Jacmel, in the island of San Domingo, disposed of a part of her outward cargo, which was invested in coffee and cotton and shipped; that on her way from said port of Jacmel to Acquin, also in said island, the ship Jane was captured by a British frigate and carried into Kingston in the island of Jamaica; that the admiralty court of Jamaica acquitted the said

ship and cargo, with the exception of a few dry goods from which the captors appealed, and bonds were given for the value of the ship and cargo; that the said ship Jane sailed thence on the 20th July 1798 bound to Baltimore, with a cargo of coffee, rum and sugar, and was on the 29th July 1798, captured by the French privateer La Pabo, Captain Banche, who took the said Captain Wallace and five men aboard and ordered his said ship to Havana, in the island of Cuba; that said privateer arrived on the 18th August, 1798 where they found the said ship Jane.

That said Captain Wallace found his ship stripped of everything; that he made repeated application to the Spanish government for redress, but could not get his ship restored or any satisfaction. That said ship Jane and cargo were disposed of by said captors at the said port of Havana without any legal sentance or other decree of condemnation.

That in consequence of said last capture and disposal of said ship Jane and cargo, the said Samuel Smith and S. Smith & Buchanan have been deprived of their property, and your memorialists now claim remuneration from your honorable board for the value of one-half said ship Jane and freight, and further for the residuary interest in the cargo, as more fully shown in annexed statement.

That your memorialists have not, nor have the said S. Smith or S. Smith & Buchanan, or any other person, who may at any time have been entitled to the amount, nor claimed, or any part thereof, within the knowledge of your memorialists, received any sum of money or other equivalent or indemnification for the loss so sustained or for any part thereof, and that the amount hereby preferred, and every part thereof, does now and always, since the time when the deeds of trust before mentioned took place, did belong, and if allowed will go absolutely and solely to your memorialists for the benefit of the creditors of said S. Smith and S. Smith & Buchanan, and to no other person or persons whatsoever.

Your memorialists further represent, as they are credibly informed and do verily believe that the said Samuel Smith and James A. Buchanan composed the then mercantile firm of S. Smith & Buchanan, and are native citizens of the United States of America, domiciliated at and prior to the year 1798 in the city of Baltimore,
92 and have so continued to the present time; that your memorialists themselves are native citizens of the United States of America and have been domiciliated in said city of Baltimore for a length of time.

Your memorialists, in substantiation of the facts and circumstances herein stated, refer your honorable board to the documents and vouchers that will accompany this memorial and those that are filed or will be filed by the Maryland Insurance Company with their memorial in this case No. 1016. Your memorialists therefore earnestly and respectfuly pray that the sum of twenty-six thousand seven hundred and two $\frac{91}{100}$ dollars with interest from the 23rd December, 1797, may be awarded.

THOS. ELLICOTT.
JOHN MEREDITH.

STATE OF MARYLAND,
Baltimore County, Baltimore City, } *sct:*

On this seventeenth day of February, 1823, personally appeared before me, the subscriber a justice of the peace, in and for said city, aforesaid, Thomas Ellicott, who being one of the society of people called Quakers affirmed and at the same time Jonathan Meredith, who made oath on the Holy Evangely of Almighty God, that the facts, circumstances and allegations stated in the foregoing memorial so far as they have come within their own knowledge, are true as stated, and those stated as derived from records or as of the knowledge of others they believe to be true.

And further that they did not know of the above-recited claim until about the time of the last adjournment of the commissioners, from the schedule or inventory which accompanied the deed of trust not containing it and also from the length of time since the loss occurred, all the accounts having been closed in the books of S. Smith & Buchanan, left no means of discovering it and that it was only from the information received from S. Smith, of said firm of S. Smith & Buchanan, that they were now enabled to make the claim.

Affirmed and sworn to before

JOHN F. HARRIS,
Justice of the Peace.

B.

Statement.

Value of the cargo shipped at Kingston (Ja.) 30,000, which covered at the premium paid Md. Ins. Co.:

Say 18 p. ct. and 2½	$37,736	
Samuel Smith's proportion, 7/16	.....	$16,509 50
S. Smith & Buchanan, 7/16	.....	16,509 50
		$33,019 00
Deduct therefrom total am't insured for their amount...		13,845 00
		19,173 50
93 Value of said ship Jane $8,000, which covered at 12½ p. ct. and 2½ p. ct., as usual	$9,411 76	
Their one-half	.....	4,705 88
Value of freight round say, on 2,400 bar'ls $3. $7,200 which covered at 12½ p. ct. and 2½ p. ct. as usual	8,470 18	
From which deduct one-third, per decision of com'rs	2,823 52	
	5,647 06	
Of which S. Smith's and Buchanan's proportion say one-half (½) is		2,823 53
Total amount of claim being		26,702 91

C.

DISTRICT OF COLUMBIA, } *sct*:
Washington County, }

On this twenty-first day of February, 1823, personally appeared before me, a justice for the peace in and for the county of Washington, Samuel Smith of the city of Baltimore and State of Maryland, and made oath on the Holy Evangely of Almighty God that the facts and circumstances stated in the foregoing memorial, as far as they come under his knowledge are just and true, and that those stated as the knowledge of others he believes to be true; and that about the (M. S. mutilated) of the commissioners the above-recited claim was brought to (M. S. mutilated) he informed the aforementioned Thomas Ellicott and Jonathan Meredith.

(M. S. mutilated.)

Agreement of Counsel as to Certain Evidence.

(Filed with depositions.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL. }
vs.
WILSON C. BUCHANAN ET AL. }

It is agreed between counsel of record in the above-entitled cause that in lieu of the production of the original papers and proceedings in the two causes of Esther S. Buchanan, administratrix of William B. Buchanan, deceased, *vs.* The United States, lately pending in the Court of Claims of the United States, and known as French spoliation claims cases No. 381 arising out of the capture of the ship Jane, John Wallace, master, and No. 2011 arising out of the capture of the ship Pataps-o, William Hill, master, or certified copies of such papers and proceedings, the printed copies of the conclusions of fact and of law found by said Court of Claims in said cases, as they appear in a bound volume of the conclusions and findings of said court, the property of Frank P. Clark, Esq., shall be read and used in evidence in this case, as though certified
94 copies of the same were filed herein. It is agreed that said volume shall not be filed among the proceedings herein but that it shall remain in the possession of Mr. Clark subject to the reasonable use of counsel.

TAYLOR & KEECH,
Solicitors for Complainant.

FRANK P. CLARK,
Solicitor for J. Louis Smith, J. Louis Smith, Adm. d. b. n., c. t. a., of Samuel Smith; Mary Coles Carter, Sally Carter, Robert Smith Carter, Cary Ann Fink, Rudolph Fink, Her Husband; Kate Prather Nicholas, Sarah Nicholas.

A. W. MACHEN,
A. W. MACHEN, JR.,
Sol'r- for Laura Patterson.
SIDNEY T. DYER AND
ELISHA DYER, JR., *Def'ts.*

Two Agreements with Reference to Certain Exhibits Filed by Complainants and Known as No. 1, 2, 3, and 4, and Filed by Defendants and Known as No. A. A., B. B., C. C., D. D.

(Filed with depositions.)

In the Circuit Court No. 2 of Baltimore City.

BUCHANAN ET AL.
vs.
BUCHANAN ET AL.

It is mutually agreed between the parties to this cause, that the following instruments and papers offered in evidence by Esther S. Buchanan, administratrix of William B. Buchanan, deceased, complainant in the above-entitled action, which have been heretofore offered in evidence in this case and shown as Complainants' Exhibits No. 1, 2, 3 and 4, may be read in evidence at the hearing and in any appellate court, in case of an appeal, with the same effect as if the original record, and all the papers and proceedings or duly certified copies thereof in the two cases of Esther S. Buchanan administratrix of William B. Buchanan, deceased, *vs.* The United States late pending in the Court of Claims of the United States, and known as "French spoliation claims cases No. 381" (arising out of the capture of the ship "Jane" John Wallace, master,) and No. 2011 (arising out of the capture of the ship "Patapsco" William Hill master,) were produced and filed in evidence in this case, and all other facts and circumstances legally requisite for the proof and authentiatication of such records proceedings, papers, or copies, as evidence in this case, has been fully proven, it being expressly understood, however, that the parties to this cause and any of them other than said Esther S. Buchanan, administratrix, etc., shall have full right to make any legal or equitable objection and exception to the relevancy or competency of the same as evidence in this cause that might have been made, had duly certified copies of the whole records and all the papers and proceedings in said *said* causes been produced and filed in these proceedings and none other, that is to say:

95 In case No. 381 (*a*) a printed copy of the petition of Esther S. Buchanan, administratrix, filed in said case, heretofore filed with the examiner and marked "Complainants' Exhibit No. 1" and (*b*) certified copies of certain depositions given by Esther S. Buchanan and Robert Carter Smith in the course of said proceeding, heretofore filed with the examiners and marked "Complainants' Exhibits No. 203."

In case No. 2011 a printed copy of the petition of Esther S. Buch-

anan, administratrix etc., filed in said case heretofore filed with the examiner and mark- "Complainants' Exhibit No. 4."

TAYLOR & KEECH,
For Complainants.

FRANK P. CLARK,
For J. Louis Smith and Sundry Other Defendants.

ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
Sol'rs for Laura Patterson, Sidney T. Dyer, and Elisha Dyer, Jr., Her Husband.

D. K. ESTE FISHER,
Sol. for Mr. and Mrs. Wainawright.

HERBERT B. STIMPSON,
Solicitor for Wilson Cary Buchanan.

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

It is mutually agreed between the parties to this cause that the following-described instruments and papers offered in evidence by Louis Smith, administrator *d. b. n. c. t. a.*, of Samuel Smith, Louis Smith, Sally Carter, Mary Coles Carter, Robert Smith Carter, Carry Ann Fink and Rudolph Fink, her husband, Kate Prather Nicholas, Sarah Nicholas, Laura Patterson, Sidney T. Dyer and Elisha Dyer Jr., her husband, defendants, and shown in Exhibits A. A. B. B. C. C. D. D. hereto annexed, may be read in evidence at the hearing, and in any appellate court, in case of appeal, with the same effect as if the originals had been produced and filed, and the making and execution thereof, and all other facts and circumstances legally requisite for the proof and authentication thereof as evidence in this cause has been fully proved; it being expressly understood, however, that the parties to this cause or any of them, other than the parties now offering said instruments in evidence, shall have full right to make any legal or equitable objection and exception to the relevancy or competancy of the instruments, or any of them, as evidence in this cause, aside from the mode of proof or authentication thereof.

96 Exhibit A A. Register of the ship "Jane," registered at the port of Baltimore on June 16th, 1797, in pursuance of an act of Congress of the United States entitled "An act concerning the registering and recording of ships or vessels."

Exhibit B B. Register of the ship "Patapsco" registered, at the port of Baltimore on June 21st, 1797 in pursuance of the act of Congress last above mentioned.

Exhibit C C. Deed of trust from Samuel Smith, James A. Buchanan and William B. Buchanan, copartners, trading under the firm — of S. Smith & Buchanan to Thomas Ellicott and Jonathan Meredith, execu-ed on the ninth day of November, 1820, and re-

corded in the land records of Baltimore county (now city) in Liber W. G. No. 157 folio 351 etc.

Exhibit D D. Memorial of Thomas Ellicott and Jonathan Meredith trustees of Samuel Smith and others, addressed and presented to the honorable the commissioners appointed under the 11th article of the treaty of amity, settlements and limits between the United States and His Catholic Majesty concluded at Washington on the 22nd February 1819.

Affidavit of Samuel Smith to said memorial made in the District of Columbia on the twenty-first day of February, 1823.

It is further agreed that each and all of the aforesaid instruments were filed and used in evidence in the cause of Esther S. Buchanan, administratrix of William B. Buchanan *vs.* The United States, late pending in the Court of Claims of the United States, and known as French spoliation claims cases Nos. 381 and 2011, and that the said Exhibit- A A. and B B. were produced and offered in evidence in said causes by the said petitioner Esther S. Buchanan administratrix etc.

TAYLOR & KEECH,
For Complainants.
FRANK P. CLARK,
For J. Louis Smith and Sundry Other Defendants.
ARTHUR W. MACHEN,
ARTHUR W. MACHEN, Jr.,
Solicitor- for Laura Patterson, Sidney T. Dyer and Elisha T. Dyer, Jr., Her Husband.
D. K. ESTE FISHER,
Sol. for Mr. and Mrs. Wainwright.

HERBERT B. STIMPSON,
For Wilson Cary Buchanan.

NOTE.—The following are the findings of the Court of Claims in the two cases of Esther S. Buchanan administratrix *vs.* The United States—copied from "Opinions of Court of Claims, Reports of Court to Congress" "French spoliations" and embodied in this record under agreement of counsel filed in this cause.

97 *Conclusions of Facts in Case* 2011, *etc.*

These cases were tried before the Court of Claims. The claimants were represented by William E. Earle, Esq. (with whom upon the brief were Messrs. Shellaberge- & Wilson), and Leonard Myers, Esq. (with whom upon the brief were Messrs. Lawrence Lewis Jr., Dallas Sanders, and J. Bayard Henry, Esqrs.), and The United States, defendants, by the Attorney General through his assistant in the Department of Justice, Benjamin Wilson, Esq., with whom was Assistant Attorney General Rob. A. Howard.

The court upon the evidence and after hearing the arguments and considering the same with the briefs of counsel on each side, determine the facts to be as follows:

I.

The ship Patapsco was a registered vessel of the United States of 230$\frac{7}{95}$ tons burthen built in the year 1796. She was owned by John Donnell, James A. Buchanan, and Samuel Smith (each owning one-third), residents of Baltimore and citizens of the United States and early in November 1798 under the command of Joshua W. Hill she sailed upon a commercial voyage from Baltimore bound to London with a cargo of coffee, cotton, sugar, and cochineal, together with one case of mathematical instruments, owned as hereinafter set forth.

II.

While pursuing her voyage the Patapsco was captured by two French privateers the Escamateur and the Furet. She was carried to Dieppe, and there condemned by the French tribunal and sold as prize, whereby she and her cargo became a total loss. Said vessel was worth the sum of $10,150, and two-thirds the freight was the sum of $3,680.

III.

The grounds of condemnation were:

1. That the crew-list was not in proper form, and as to this the prize tribunal said:

The tribunal considering, first, that the sea letter issued to Captain Joshua William Hill for the ship Patapsco contains all the formalities required in article 25 of the treaty of amity and commerce between France and the United States of America of February 6, 1778, as well as the model annexed to said treaty; that the first column which is in French and which is a literal copy, expressly states that the captain resides at Baltimore; that the signatures of the President of the United States, of the collector and naval officer at Baltimore, as well as the seal affixed to this act, are common in intent and fact to the four columns which compose the whole of this sea letter.

Second. That the difference in the ink and in the writing found in the third column of this role made to contain the places of birth of those composing it can only be considered as an irregularity which renders this act suspicious. Fourth. That the bill of health delivered the sixth November 1798 (o. s.), to the captain by the
98 same public officers who the day previous received the declaration, sworn to by the captain of the number of men composing his crew being different from the role, makes this role still more suspicious, for it bears only the names of fifteen persons, whilst the bill of health states them at twenty. Fifth. That according to the decree of the twenty-sixth October, 1792, a law not abrogated, the dispositions of the officers and sailors of captured vessels can be taken in preference to the bills of lading and other acts making a portion of the papers on board. Sixth. That the role d'equipage of the ship Patapsco, presented by Captain Hill, is not to be taken in preference to the declarations of eight men of his crew and one of the passengers on board, as the irregularities and defects before mentioned make it at least very suspicious.

Seventh. That nothing against these nine individuals had been brought, or any proof of subornation or seduction. Eighth. That therefore no faith can be given to the contents of the role d'equipage of the ship Patapsco, which is null and of no value. Ninth. That all neutral ships, and particularly the American ships which do not have on board a role d'equipage in proper form, should be declared good prizes.

2. That no sufficient certificate of cargo was found on board, and as to this the prize tribunal said.

That all merchandise shipped under the American flag not sufficiently proved neutral ought to be confiscated. Eleventh. That according to article 25 of the treaty of amity and commerce between France and the United States of America of the sixth February, 1778, expressly states the obligation of captains of ships to be furnished with certificates issued in the usual form by the officers of the places from which the vessels have sailed, and to exhibit them. Twelfth. That this essential paper according to the treaty, is not found on board the Patapsco, and that the captain did not show it.

3. Because of the mathematical instruments found on board, as to which the prize tribunal said:

That the compasses contained in the case found on board of this ship bear on the greater part of the same the England manufacture by this superscription: Made by Thomas Bradford of London. And according to the law of twenty-ninth Nevose, sixth year, all vessels found at sea loaded entirely or in part with merchandise coming from England shall be declared good prizes; that even the condition of ships, as regards their neutral or enemy's character, shall be determined by their cargoes.

It appears that the ship had on board and there were before the prize tribunal a passport, register sea letter, clearance, manifest of cargo, bills of lading and invoices, which were criticised as above set forth by the prize tribunal.

IV.

John Donnell and the firm of S. Smith & Buchanan owned jointly 41 bales of cotton shipped on said Patapsco. John Donnell was a citizen of the United States. Samuel Smith, James A. Buchanan, and William B. Buchanan, citizens of the United States, formed the said firm of S. Smith & Buchanan. The said cotton was worth the sum of $4,100, of which said Donnell and said firm each owned half.

99 V.

The said firm of S. Smith & Buchanan and John Smith, Jr., a citizen of the United States, owned jointly, one-half by said firm and one-half by said John Smith, Jr., 70 hogsheads and 1,233 sacks of coffee shipped on said Patapsco. Said coffee was worth the sum of $46,012.

VI.

Robert Gilmor & Co. owned 28 packages of cochineal shipped on said Patapsco, and said Robert Gilmor & Co., it is admitted in argu-

ment, have been reimbursed by insurers for their loss thereon, as hereinafter shown.

VII.

John Hollins, a citizen of the United States owned 100 boxes of white Havana sugar shipped on said *shipped on said* Patapsco, which were worth $7,600.

VIII.

John Smith, Junior, hereinbefore mentioned, also owned 335 cases of Havana sugar, shipped on said Patapsco worth $25,460.

IX.

John Stewart was appointed January 23, 1886, by the circuit court of Baltimore, Md., as receiver of the Maryland Insurance Company. Robert Gilmor & Co., citizens of the United States shipped on said Patapsco 28 packages of cochineal and caused insurance to be effected thereon for the voyage aforesaid in the office of the Maryland Insurance Company in the sum of $28,000, the value thereof which said sum said company thereafter paid to the assured, in consideration whereof the latter by an instrument in writing dated in the month of May 1800, and acknowledged upon the tenth day of said month and year, "bargained, sold, assigned transferred, ceded, abandoned, and set over" to said company the insured property, and all rights to have, to hold recover, receive, and take the same, and said assured further constituted said company their attorney, to recover and receive for the use of said company the said insured property and all moneys thence arising, and "all damages of and concerning the same from all and every king, prince, potentate, State, republic persons and person whomsoever."

X.

November 9, 1820, said Samuel Smith, James A. Buchanan and William B. Buchanan copartners, and trading as hereinfore set forth as copartners under the firm name of S. Smith and Buchanan assigned in trust to Thomas Elliott and Jonathan Meredith as trustees all their real and personal estate belonging to them in the said copartnership capacity of S. Smith and Buchanan. This assignment was made for the benefit of creditors and for the nominal consideration of $5. The purposes of this trust have been satisfied as appears by evidence taken since the findings were filed in the case of the ship Jane.

Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April 1803. They were not claims growing out of the
100 acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain concluded on the 22nd of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the fourth of July, 1831.

The claimants in their representatives capacities are the owners of said claims, which have never been assigned except as aforesaid.

Conclusions of Law.

The court decides as conclusions of law that said seizure and condemnation were illegal and the owners and insurers had valid claims of indemnity therefor upon the French government prior to the ratification of the convention between the United States and the French Republic concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States.

William Donnell, administrator *de bonis non cum testamento annexo* of the estate of John Donnell, deceased, to the sum of	$6,659 99
George W. Brown administrator of the estate of James Buchanan deceased to the sum of	4,609 99
(Being his share of vessel and freight.)	
Robert Carter, administrator *de bonis non cum testamento annexo* of the estate of Samuel Smith deceased to the sum of	4,609 99
(Being his share of vessel and freight.)	
Esther S. Buchanan, administratrix of the estate of William Buchanan who was the surviving partner of the firm of S. Smith and Buchanan deceased, to the sum of	25,056 00
(The value of the cargo by said firm.)	
Cumberland D. Hollins, administrator *de bonis non cum testamento annexo* of the estate of John Hollins deceased to the sum of	7,600 00
Mary Ann B. Smith, as administrator *de bonis non cum testamento annexo* of the estate of John Smith Jr., deceased to the sum of	48,466 00
John Stewart, as receiver of the Maryland Insurance Company, to the sum of	28,000 00

Filed April 22, 1889.

BY THE COURT.

Conclusion of Facts in Case 381, *etc.*

These cases were tried before the Court of Claims on the 18th May 1887.

These claimants were represented by William E. Earle, Esq., and The United States, the defendants, by the Attorney General through his assistant in the Department of Justice, Benjamin Wilson Esq., with whom was Assistant Attorney General Rob. A. Howard.

101 The court, upon the evidence, and after hearing the arguments and considering same with the briefs of counsel on each side, determine the facts to be as follows.

General Findings Relating to the Ship and Cargo.

I.

The ship Jane, of Baltimore, sailed from Jamaica for that port on the 20th July 1798, in company and under convoy of the British frigate Roebuck. They kept company with the convoy until the sixth day, when a strong current set to leeward. On the 25th the ship bore away and proceeded on her voyage un il the 29th of the same month, when, being westward of the Grand Cayennes, she was boarded by the French privateer La Pabo, which took out the captain and five men and by the prize crew to Havana, whether the master of the ship was subsequently brought by the privateer. He applied to the Spanish government, but could not get the ship restored. She was then taken to Cape Francois where she was condemned by the tribunal of commerce. The ground- of condemnation were that the Jane had sailed from Kingston, an English port, laden with rum and sugar, the produce of English possessions which was contrary to the provisions of certain French decrees. Another ground of condemnation was that — nothing on the ship which proved his naturalization, contrary to the French decree respecting the navigation of neutral vessels in time of war. No other ground of condemnation was alleged.

II.

The Jane was a duly registered vessel, measuring 214 tons, built at Baltimore in the year 1790, and owned by John Hollis of Baltimore, one-half, and by Samuel Smith and James A. Buchanan, of Baltimore, one-half as appears by the register June 15, 1797. John Smith is named in the register as master, but John Wallace was master at the time of capture, and the copy of the register, carried by the vessel on which his name as master may have been indorsed was detained by the captors and cannot be produced.

III.

The cargo consisted of merchandise belonging to the firm of S. Smith & Buchanan, and to Samuel Smith individually, and one Edmund Suise, Samuel Smith and Smith & Buchanan were merchants doing business in Baltimore Edmund Suise does not appear in these proceedings.

IV.

The value of the ship was	$6,420 00
The value of Samuel Smith's portion of the cargo, seven-sixteenths	13,710 34
The value of Smith & Buchanan's portion of the cargo, seven-sixteenths	13,710 34
The value of Edmund Suise's portion of the cargo, two-sixteenths	3,917 22
The freight earnings of the vessel for the voyage	3,424 00
Premium of insurance paid on cargo	3,600 00
Amounting in all to	44,781 90

V.

In case No. 381.—The firm of S. Smith & Buchanan were the owners of one-half of the vessel and of seven-sixteenths of the cargo.

They had procured insurance for themselves and the other owners of the cargo to the amount of $20,000 upon the cargo. For this insurance the firm of Smith & Buchanan paid as their proportion of the premium $1,560, and subsequently, received from the insurers $8,532.13.

The los-es of Smith & Buchanan by reason of the capture of the Jane and her cargo, for which they are entitled to endemnity, are as follows:

One-half of the ship	$3,210 00
Seven-sixteenths of the cargo	13,710 34
One-half of the freight earnings of the vessel	1,712 00
Premium paid for insurance	1,560 00
Amounting in all to	20,192 34
Less received for insurance	8,532 13
Leaving amount of losses	11,660 22

VI.

In case No. 1003 Samuel Smith was the owner of seven-sixteenths of the cargo.

He had procured insurance through the firm of Smith & Buchanan, as set forth in the preceding finding, and had paid as his proportion of the premium of $1,560. He subsequently received from the insurers $8,532.13.

The losses of Samuel Smith by reason of the capture of the cargo of the Jane for which he was individually entitled to indemnity, are as follows:

Seven-sixteenths of the cargo	$13,710 34
Premium paid for insurance	1,560 00
Amounting in all to	15,270 34
Less received for insurance	8,532 13
Leaving amount of losses	6,738 21

VII.

In case No. 770. John Hollins was the owner of one-half of the vessel.

The losses of John Hollins by reason of the capture of the Jane, for which he was entitled to indemnity, are as follows:

One-half of the ship	3,210 00
One-half of the freight earnings of the vessel	1,712 00
Amounting in all to	4,922 00

VIII.

In case No. 996. The Maryland Insurance Company was in 1797 a corporation duly organized under the laws of the State
103 of Maryland authorized to carry on the business of marine insurance. On the 20th December, 1794, it issued a policy of insurance to the firm of S. Smith & Buchanan, for themselves and other owners of the cargo of the Jane, for a voyage from Baltimore to Hispaniola and other ports and return. Upon this policy the company subsequently paid to the owners of the cargo for the capture of the Jane, as set forth in finding I, the sum of $19,502 and the owners abandoned the cargo to the insurers as a total loss.

The losses of the Maryland Insurance Company by reason of the capture of the Jane and her cargo amounted to $19,502.

IX.

In case No. 996 the claimant, John Stuart, on the 23rd day of January, 1886, was appointed by the circuit court of Baltimore, Md., receiver of the Maryland Insurance Company, with authority to collect the outstanding debts due to the company and especially the claims against the United States commonly known and described as the French spoliation claims. It does not appear whether the persons for whose benefit the said Stewart was appointed receiver were the stockholders of the company and their personal representatives or the creditors of the company and their personal representatives.

X.

November 9, 1820, said Samuel Smith, James A. Buchanan, and William B. Buchanan, copartners, and trading as hereinbefore set forth as copartners under the firm name of S. Smith & Buchanan, assigned in trust to Thomas Ellicott and Jonathan Meredith, as trustees, all their real and personal estate belonging to them in the said copartnership capacity of S. Smith & Buchanan. This assignment was made for the benefit of creditors and for the nominal consideration of $5 the purposes of this trust have been satisfied.

XI.

In case No. 381 William B. Buchanan was the surviving partner of the firm of S. Smith & Buchanan. The claimant Esther S. Buchanan has produced letters of administration for the estate of William B. Buchanan, deceased, and has otherwise proved to the satisfaction of the court that the person of whose estate she is administratrix was the same person who was an owner of the Jane and her cargo in 1798 and a citizen of the United States.

XII.

In case No. 1003, the claimant Robert Carter Smith has produced letters of administration for the estate of Samuel Smith, deceased, and has otherwise proved to the satisfaction of the court that Samuel Smith of whose estate he is administrator, was the same person who

was an owner of the Jane and her cargo in 1798 and a citizen of the United States.

XIII.

In case No. 770 the claimant Cumberland D. Hollins has produced letters of administration for the estate of John Hollins, deceased and has otherwise proved to the satisfaction of the court that the person of whose estate he is administrator was the same
104 person who was an owner of the Jane in 1798, and a citizen of the United States.

XiV.

Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April 1803, and were not claims growing out of the acts of France, allowed and paid in whole *on* in part under the provisions of the treaty between the United States and Spain, concluded on the 22nd of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July 1831.

The claimants in their respective capacity are the owners of said claim, which has never been assigned except as aforesaid.

Conclusion of Law.

The court decides as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French government prior to the ratification of the convention between the United States and the French Republic concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States; and that the claimants are entitled to the following sums from the United States:

Esther S. Buchanan administratrix, representing Smith & Buchanan	$11,660 21
Robert Carter Smith, administrator, representing Samuel Smith	6,738 21
Cumberland D. Hollins, administrator, representing John Hollins	4,922 00
John Stewart, receiver of the Maryland Insurance Company	19,502 00
	$42,822 42

Filed December 7, 1891.

BY THE COURT.

Depositions of James A. Buchanan in the Baltimore county court (removed to court of common pleas of Baltimore city), *in re* James A. Buchanan, an insolvent debtor, viz., interrogatories numbers one, three, seventeen, nineteen, thirty-one, and forty-one, with the answers thereto and the appended certificate of the justice of the peace, and the paper marked "A," entitled "Statement of the affairs of S. Smith & Buchanan." (Interrogatories filed on 18th May, 1821, and answers thereto, &c., on 18th June, 1821.)

(Embodied in this record under agreement of counsel.)

Interrogatories to be propounded to James A. Buchanan, an insolvent debtor, on the part of the Bank of the United States and the Union Bank of Maryland, creditors of the firm of S. Smith & Buchanan, of the city of Baltimore.

Interrog. I. At what time did the firm of Smith and Buchanan become insolvent, and how long before their suspension of payment did they ascertain that they should be obliged to submit to it?

105 1st answer. Smith and Buchanan suspended their payments in the month of May 1819. Previously to that month, they had not "ascertained," nor did it occur to them, that they would be obliged to stop payment.

Interrog. III. To what amount were they deficient in their means to pay their debts at the time of their failure and what was the amount of their debts?

3rd answer. Soon after the suspension of payment by S. Smith & Buchanan, a statement was prepared, exhibiting the debts of the house, including of the debt of the United States bank, at $640,000, and its means exclusively of its claims on Holland France and Naples, at $723,850. A copy of this statement was presented to the Bank of the United States, and another copy marked A. is presented herewith.

"A."

Statement of the Affairs of S. Smith & Buchanan, Debts due by S. Smith & Buchanan.

Bills payable notes to trustees			
	Geo. P. Stevenson.....	23,476	
	James Hindman.....	6,803	
	Hollins & McBlair.....	3,804	
	P. Tessier.....	4,755	38,838
Due James Bosley.....		.....	28,196
D. Winchester.....		.....	5,412
Honqua		.....	11,827
Palmer & Co.....		.....	4,033
Andrew Crawford.....		.....	671
Custom-house.....		.....	20,000
Premiums of insurance.....		.....	13,000
James Scott & Co.....		.....	30,000
A. De Frias & Co.....		.....	30,000

Our proportion bills p. Brazilian from Calcutta	.....	20,090
Thomas Pany	.....	5,044
H. T. Tampayo	.....	1,989
Office discount & deposit	*35,000	
B. U. S. secured by endorsers	240,000	
⅓ excess on stock notes	90,000	
Discount at office on notes Calhoun & Matthews	42,000	
Discounts at office on notes Lemuel Taylor.	15,000	422,000
There may be other debts to amount of, say	.....	8,900
		$640,000

106 We are endorsers or signers for Hollins & McBlair $56,750, for Lemuel Taylor $15,000, for Calhoun & Matthews $31,228.50 for James Purviance $9,000, and there may be other endorsements to an inconsiderable amount. We are assurred that the several parties will prevent recourse being had to us.

We cannot estimate the result of our engagements with the bank and others for loans on hypothicated stocks. These loans are unknown to the bank and it is hoped they will be met by the stock. If there be a gain thereon it will of course be an augamentation of our means.

Debts and Property Belonging to S. Smith & Buchanan.

Ship Sidney Hugo	5,000	
Wabash & do	7,000	
Exchange & do. after paying bill to B. W. I.	10,000	
Unicorn & do	10,000	
Brig Homer & cargo	40,000	180,000
Ship General Smith	.....	5,000
Brig Ariadne	.....	2,000
Warren Manufactory	.....	37,00
Exchange stock	.....	6000
Improving Company	.....	500
Union Manufactory	.....	1350
Fire Insurance Company	.....	1000
Smith Calhoun & Co	.....	10,000
T. A. Buchanan & Co	.....	20,000
Ship Warren under Spanish treaty	.....	50,000
Goods on hand	.....	10,000
Hollins & McBlair	.....	30,000

* The banks state this balance at $76,310 but we understand they charge therein $25,000 which belongs to and will be secured by F. W. McCulloh, $11,000 for interest which belongs to and is included in our estimate of balance due stocks notes and 5,000 a check on New York for which 50 shares B. W. F. stock are deposited, and we are entitled to a credit for dividend not contained the probable amount about $6,000.

Estate William Wyse	.....	3500
Funds in Pernambuco	.....	4000
Lands in North Carolina	.....	2000
Lemuel Taylor	.....	18.000
½ surplus Gen'l Smith's cargo to Rotterdam	.....	5.000
T. L. L. Brent	.....	3000
F. W. Bronough	.....	500
A shipment to Leghorn	.....	15000
Real estate	.....	250.000
Other real estate & personal estate	.....	70.000
		723850

Claims on the French, the Dutch and the Neapolitan Governments.

Claim on Lima for ship clothier.

Interrog. XVII. Have you surrendered and delivered up to your provisional trustee all your books, books of account, and papers, property, estate and effects, bonds, notes, and evidences of debt? If you have not in whose hands or possession are they, and why have they not been so delivered up? Have you in your possession, or under your control, any property real personal or *mixt*, of any nature or description, the necessary wearing apparal and beddery of yourself and family excepted?

17th answer. Previously to my application for the benefit of the insolvent law, I in the month of November, 1820, as one of
107 the firm of S. Smith & Buchanan united in a transfer of all their effects to trustees one of whom, namely Thomas Ellicott Esqr. was named by the Bank of the United States and delivered to them the working books of the house. There is a large mass of other books, which I consider unimportant but which have been held at the disposition of the trustees. I have not in my possession, or under my control, any property, real personal or mixed, of any nature or description, wearing apparal and some trifling counting-house furniture excepted belonging to myself or to S. Smith & Buchanan, or to my creditors. I have not since the failure of S. Smith & Buchanan, drawn upon the funds for my maintenance, except in the trifling sum which will be stated in my 31st answer, but have supported myself and my family from the means of my children which are amply sufficient for the purpose.

Interrog. XIX. What was the situation of the commercial house of S. Smith & Buchanan at the commencement of the year 1818? Was it solvent? Do the books of that firm exhibit a fair and correct statement of their situation at that period? If solvent, how much did you estimate the house to be worth?

19th answer. At the commencement of the year 1818, the house of S. Smith & Buchanan was unquestionably solvent, and a conclusive evidence that such was my sincere undissembled belief, is to be found in this fact, viz:—that my son William, who enjoyed a competent independant estate of his own, was, on the first day of

that year, taken into the house of S. Smith & Buchanan as a partner. The books of the house of S. Smith & Buchanan, give as fair and correct a statement of their affairs at that period, as could well be given, where the concerns were so various and extensive. I do not recollect to have them estimated, and I cannot now estimate what the house was then worth.

Interrog. XXXI. Do the books of S. Smith & Buchanan exhibit a fair full and complete account of the business of the said firm since the first day of May 1819? Are all the payments made by, and disbursements of every kind made by them, and monies received by them, or any of them, and losses sustained by them, regularly entered in the said books? If they are not. Exhibit a statement of all monies and property of every kind received by you on behalf of the said firm, or which have come into your hands since the said period, and which have not been entered upon the books, and state what transfers of property or payments of money have been made, and to whom and which, since that period, and which do not appear on the books.

31st answer. I believe that the books of S. Smith and Buchanan, exhibited as fair, full and complete an account of the business of the said firm, since the first of May, 1819, as the deranged state of their affairs would permit. I recollect no payments which do not appear on said books, unless it be, some trifling sums, less altogether than $1000, unexpectedly recovered, on accounts which had been closed, and which sums, were used for family expenses, in equal portions, by my senior partner and myself.

108 Interrog. XL. At the time of the failure of James Calhoun what was the nature of your mutual relations as debtor and creditor? Was he indebted to you or you to him and if either to what amount, and how were such debts provided for by him or you? Were you responsible on any of his paper, if yea state particularly to what amount, and did you or did you not consent to hold yourself liable and to discharge him upon making any settlement from his father's estate upon yourself or your family, were such settlements ever made upon your family, and if so, have you ever paid the creditors of James Calhoun upon such responsibilities or obligations?

40th answer. At the time of the failure of James Calhoun Jun'r there were no pecuniary relations between him and me, as debtor and creditor, except as already stated, in our partnership connexion. I was not otherwise responsible upon any of his paper, nor he upon any of mine. He made no settlement of any kind upon me or my family. I have made therefore payments to his creditors, upon such responsibilities or obligations.

BALTIMORE COUNTY, *sct:*

On the 18th June, 1821 personally appeared James A. Buchanan before the subscriber a justice of the peace in and for the county aforesaid who made oath on the Holy Evangely of Almighty God

that the above answers are correct and true to the best of his knowledge and belief.

Sworn before

WM. M. MEDCALF, *J. P.*

Exceptions to Testimony.

(Filed 21st June, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the honorable the judge of said court:

The complainant, Esther S. Buchanan, administratrix etc. by Taylor and Keech her solicitors, object, and except to the admission in evidence of the following testimony and documents herein named, offered in evidence by the defendants J. Louis Smith and others, for the reasons hereinafter set forth.

Third. They object to the admission in evidence of the following documents and papers, and to the effect thereof.

1. Defendants' Exhibit A A. (being a copy of the register of the ship Jane)

2. Defendants' Exhibit B B. (being a copy of the register of the ship Patapsco).

3. Defendants' Exhibit D D. (being a copy of a certain memorial etc.)

4. The papers and proceedings in a proceeding late pend-
109 ing in the Baltimore county court etc. entitled "*In re* James A. Buchanan an insolvent debtor" etc. in so far as the same or any one or more of them may be taken or attempted to be taken to contradict or vary the terms conditions force and effect of the proceedings, findings and acts by virtue of and as a consequence of which the fund of money in this case for distribution was paid to the complainant as administratrix of William B. Buchanan, deceased, and the legal effect of said payment or in so far as the same may be taken or attempted to be taken to show that the partners in said firm of S. Smith and Buchanan were other than Samuel Smith, James A. Buchanan and William B. Buchanan all now deceased, and that William B. Buchanan was surviving partner of said firm.

1. Because it is not competent in this proceeding to seek to contradict or vary the force, effect, terms and conditions of the proceedings, findings and acts upon by and as a consequence of which the fund in this proceeding for distribution was paid to said complain-t as administratrix of William B. Buchanan, deceased.

2. Because the offer of said documents and proceedings constitutes an attempt to so vary or collaterally impeach such proceedings, finding- and acts.

3. Because by said proceeding-, findings and acts said award was made to this complainant as administratrix of William B. Buchanan, deceased, on behalf of a firm of S. Smith and Buchanan of which the members were S. Smith, James A. Buchanan, and William B. Buchanan *were members* of whom William B. Buchanan was the survivor.

4. Because the same are in contradiction of the other evidence offered in this case on behalf of said defendants.

5. For other reasons to be shown at the hearing etc.

TAYLOR & KEECH,
For Complainants.

General Replication.

(Filed 28th June, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the Honorable Henry Stockbridge, judge of said court:

The p-aintiff joins issue on the matters alleged in the amended answers of J. Louis Smith *et al.* and of Laura Patterson *et al.* so far as the same may be taken to deny or avoid the allegations of the bill.

TAYLOR & KEECH,
Solicitors for Plaintiff.

110 *Order of Court on Exceptions.*

(Filed 28th June, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILLIAM C. BUCHANAN ET AL.

In the matter of the exceptions of the complainant- to certain evidence offered by the defendant, J. Louis Smith and others,

The court deems it unnecessary to rule on complainant-' first exception, for the reason that the offer of the letter referred to therein has been withdrawn by said defendant.

The court sustains the complainants' second exception to the admissibility of a certain statement of the witness J. Louis Smith referred to in said second exception.

And the court hereby overrules the complainants' third exception as to the admissibility in evidence of certain documents referred to in said exception.

HENRY STOCKBRIDGE.

Decree.

(Filed 28th June, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Decree.

The above-entitled cause coming on for a hearing, and the same having been fully argued by counsel and considered by the court:

It is thereupon this 28th day of June, 1900 ordered adjudged and decreed by the circuit court No. 2 of Baltimore city that the fund in the hands of Esther S. Buchanan, administratrix of William B. Buchanan, deceased, complainant, in this proceedings, be divided into three equal parts, and that one of said three equal parts of said fund be distributed among the next of kin of each of the partners of the firm of S. Smith & Buchanan, to wit, Samuel Smith, deceased, James A. Buchanan, deceased, and William B. Buchanan, deceased, in being on the third day of March 1899, *per stirpes*, and not *per capita*, treating the said Samuel Smith James A. Buchanan and William B. Buchanan, respectively, as the originai *stirp-s*, according to the laws of the State of Maryland and the statutes of this State in such cases made and provided.

And it is further ordered adjudged and decreed that the costs of this proceeding be paid out of the fund in the hands of the complainant, now brought into court for distribution.

111 And it is further ordered adjudged and decreed that the papers in this cause be referred to one of the auditors of this court for the statement of an account in the premises, in accordance with the terms of this decree.

HENRY STOCKBRIDGE.

Order for Appeal of Laura Patterson et al.

(Filed 13th July, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

To the clerk of the circuit court number two of Baltimore city:

Laura Patterson, Sidney T. Dyer and Elisha Dyer Jr. her husband, defendants in this cause, pray an appeal to the court of ap-

peals from the order or decree passed therein on the 28th day of June 1900.

A. W. MACHEN,
ARTHUR W. MACHEN, JR.,
Sol'rs for Defendants Laura Patterson, Sidney T. Dyer, and Elisha Dyer, Jr.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

I hereby certify that on this 13th day of July, 1900, personally appeared before the subscriber a justice of the peace of Baltimore city, Arthur W. Machen, Jr., and made oath in due form of law that the above appeal is not taken for delay.

WILLIAM R. LLEWELLYN, *J. P.*

Order for an Appeal of J. Louis Smith et al., Defendants.

(Filed 13th July, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Mr. Clerk:

Please enter an appeal in this case from the decree of the twenty-eighth of June, 1900, for the following defendants: J. Louis Smith, Mary Coles Carter, Sally Carter, Robert Smith Carter, Cary Ann Fink, and Rudolph Fink, her husband, Kate Prather Nicholas, Sarah Nicholas.

FRANK P. CLARK, *Solicitor.*

STATE OF MARYLAND, *City of Baltimore,* } *ss:*

Personally appeared before me, a justice of the peace of the
112 State of Maryland, in and for the city of Baltimore, Frank P. Clark, solicitor for the appel-ants in this case, who made oath in due form of law, that the appeal is not taken for delay.

Witness my hand, this 13th day of July, 1900.

ANDREW J. COLLARS, *J. P.*

Agreement of Counsel.

(Filed 21st July, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

It is hereby mutually agreed between the parties to the above-entitled cause that the paper designated as Plaintiffs' Exhibit Exam-

iner No. E, being a printed pamphlet copy of the act of Congress of March 3rd, 1899, entitled "An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3rd, eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes" shall not be copied into the transcript of the record to be transmitted to the court of appeals on the appeals heretofore taken in this cause by certain of the parties defendant, nor shall the same be printed in the court of appeals, but that in lieu of said copying and printing the appellants shall cause to be handed to each of the judges of the court of appeals with the printed record a printed pamphlet copy of said act of Congress, which said pamph-et shall be deemed and taken for all intents and purposes a part of the record in this case and to the same effect as if the same had been transcribed therein except that, as above provided, the same shall not be transcribed or printed, the said — being the same as is printed on pages 1161 to 1214 both inclusive of the United States Statutes at Large vol. 30.

TAYLOR & KEECH,
For Complainant.
FRANK P. CLARK,
Solicitor for Sundry Defendants.
HERBERT B. STIMPSON,
Solicitor for Wilson Cary Buchanan.
D. K. E. FISHER
(W. C. B.),
Sol'r for Mrs. Wainawright.

ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
Solr's for Laura Patterson and Other-.

Agreement of Counsel as to Record.

(Filed 21st July, 1900.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

113 Mr. Clerk:

In making a transcript of the record in this case to be transmitted to the court of appeals, please omit the following-described papers and parts of papers:

1. Order of appearance for Robert Carter Smith, &c.
2. Order of publication and certificate of publication thereof against non-resident defendants.
3. Order to renew subpœna against Laura Patterson.
4. Petition for leave to take testimony before an examiner and order thereon.
5. Plaintiffs' Exhibit Examiner No. G.

(*Re* Martin estate.)

6. Agreement to take deposition of J. Louis Smith and interrogatories.

7. Commission to Frank M. Eastman to take testimony and the deposition of J. Louis Smith returned thereunder.

8. The letter book of Samuel Smith, offered in evidence by defendants, and afterwards withdrawn.

9. Plaintiffs' first and second exceptions to evidence.

10. Proceedings in the case of *In re* James A. Buchanan's estate in the court of common pleas, except the title of the case &c., and except interrogatories 1, 3, 17, 19, 31 & 40 addressed to James A. Buchanan by the representatives of his creditors and the answers of Jas. A. Buchanan there- and except the appended certificate of the justice of the peace and except the paper marked "A" entitled "Statement of the affairs of S. Smith & Buchanan" all of which matters so excepted shall be transcribed.

11. Plaintiffs' Exhibit Examiner E being a copy of act of Congress entitled "An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March third eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes," the same being provided for by a separate agreement of counsel filed in this cause.

All other papers and proceedings in the cause should be transcribed in full.

TAYLOR & KEECH,
For Complainant.
FRANK P. CLARK,
Solicitor for Sundry Defendants.
ARTHUR W. MACHEN,
ARTHUR W. MACHEN, JR.,
Solicitors for Laura Patterson and Others.
HERBERT B. SIMPSON,
Sol. Wilson Carey Buchanan.
D. K. E. FISHER,
W. C. B.,
Sol. for Mers. Wainwright.

114 PLAINTIFFS' EXHIBIT EXAMINER No. E, Referred to in Agreement Set Forth on Page Eighty-one.

"(Public—No. 190.)

An act for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March third, eighteen hundred and eighty-three, and commonly known as the Bowman act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to

pay, out of any money in the Treasury not otherwise appropriated, to claimants in this act named the several sums appropriated herein, the same being in full for, and the receipt of the same to be taken and accepted in each case as a full and final release and discharge of their respective claims, namely:

Claims allowed under the Bowman and Tucker acts by the Court of Claims.

115 Supplemental Bowman and rent cases.
Miscellaneous Court of Claims findings.

French Spoliation Claims.

To pay the findings of the Court of Claims on the following claims for indemnity for spoliations by the French prior to July thirtieth, eighteen hundred and one, under the act entitled 'An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one:' Provided, that in all cases where the original sufferers were adjudicated bankrupts the awards
116 shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursements of the awards, namely:

On the ship Jane, John Wallace, master, namely: Esther S. Buchanan, administratrix, representing Smith and Buchanan, eleven thousand six hundred and sixty dollars and twenty-one cents.

Robert Carter Smith, administrator, representing Samuel
117 Smith, six thousand seven hundred and thirty-eight dollars and twenty-one cents.

Cumberland D. Hollins, administrator, representing John Hollins, four thousand nine hundred and twenty-two dollars.

On the ship, Patapsco William Hill, master, namely: William Donnell, administrator *de bonis non cum testamento annexo* of the estate of John Donnell, deceased, six thousand six hundred and fifty-nine dollars and ninety-nine cents.

George W. Brown, administrator of the estate of James A. Buchanan, deceased, four thousand six hundred and nine dollars and ninety-nine cents, being his share of vessel and freight.

Robert Carter Smith, administrator *de bonis non cum testamento annexo* of the estate of Samuel Smith, deceased, four thousand
118 six hundred and nine dollars and ninety-nine cents, being his share of vessel and freight.

Esther S. Buchanan, administratrix of the estate of William B. Buchanan, who was the surviving partner of the firm of S. Smith and Buchanan, deceased, twenty-five thousand and fifty-six dollars, the value of the cargo shipped by said firm.

Cumberland D. Hollins, administrator *de bonis non cum testamento*

annexo of the estate of John Hollins, deceased, seven thousand six hundred dollars.

Virgillia B. Brooke, administratrix *de bonis non cum testamento annexo* of the estate of John Smith, Junior, deceased, forty-eight thousand four hundred and sixty-six dollars.

Provided, however, that any French spoliation claim appropriated for in this act shall not be paid if held by assignment
119 or owned by any insurance company.

Under contracts of the Navy Department.

Selfridge board findings.

State claims.

Miscellaneous claims.

Piute Indian claims.

For investigation and settlement.

Approved, March 3, 1899."

120 Which said appeal being by the court here also granted, it is thereupon ordered by the court here that a transcript of the record of proceedings in the case aforesaid be transmitted to the court of appeals of Maryland under the agreement of counsel filed in said cause and the same is transmitted accordingly

Test: ALF. J. SCHULZ,
Clerk of the Circuit Court No. 2 of Baltimore City.

In testimony whereof that the foregoing is a full and true transcript of the foregoing papers taken from the record of proceedings in the circuit court No. 2 of Baltimore city in the cause therein mentioned.

I hereto set my hand and affix the seal of the said
(Seal's place.) circuit court No. 2 of Baltimore city on this 30th day of July in the year of our Lord one thousand nine hundred.

Test: ALF. J. SCHULZ,
Clerk of the Circuit Court No. 2 of Baltimore City.

And now at this day, to wit: the second Monday in January being the *the* 14th day of said month in the year of our Lord one thousand nine hundred and one come into the court of appeals here, the parties aforesaid by their attorney- aforesaid.

Whereupon as well the record and proceedings aforesaid, and the judgment given in form aforesaid, being seen, and by the court of appeals here fully understood, and mature deliberation there-
121 upon had, for that it appears to the court of appeals here, that the decree of the circuit court No. 2 of Baltimore city made in this cause on the 28th day of June 1900 be and the same is hereby affirmed in part and reversed in part and the cause remanded for further proceedings, the costs to be paid out of the fund to be distributed.

Note.

The opinion and decree filed in the above-named cause are fully set forth and printed in the record of the case of Esther S. Buch-

anan individually, and as administratrix of William B. Buchanan and Wilson Cary Buchanan *vs.* Laura Patterson *et al.* and hereunto annexed as follows, to wit:

122 Record. No. —.

In the Court of Appeals of Maryland.

ESTHER S. BUCHANAN, Individually and as Adm'x of William B. Buchanan and Wilson Carey Buchanan,
vs.
LAURA PATTERSON and Others.

Appeal from the circuit court No. 2 of Baltimore city.

Filed July 20th, 1901.

Taylor & Keech, Herbert B. Stimpson, for appellants.
Arthur W. Machen, Arthur W. Machen, Jr., Frank P. Clark, for appellees.

123 Appeal from the circuit court No. 2 of Baltimore city.

Note by the Clerk.

All the papers and proceedings in this cause preceding those contained in this transcript of record have heretofore been transmitted to the October term 1900 of the court of appeals of Maryland on the 2 appeals heretofore taken in this cause by J. Louis Smith *et al.*, and by Laura Patterson *et al.*, the same being entitled in said court J. Louis Smith *et al.*, *vs.* Esther S. Buchanan *et al.* and Laura Patterson *et al. vs.* Same, 2 appeals on one record said papers and proceedings being omitted from this transcript according to the provisions of the statute in such cases made and provided.

Opinion and Decree of Court of Appeals.

(Filed 28th February, 1901.)

Court of Appeals of Maryland, January Term, 1901.

LAURA PATTERSON and Others
vs.
ESTHER S. BUCHANAN, Adm'r'x, and Others.

J. LOUIS SMITH and Others
vs.
ESTHER S. BUCHANAN, Adm'r'x, and Others.

Judge FOWLER delivered the opinion of the court:

In the latter part of the 18th century the firm of S. Smith & Buchanan, of Baltimore, Maryland, was largely engaged in mercantile transactions both at home and abroad. In the year 1798 this firm suffered losses by the unlawful seizure of ships and cargoes in which

it was interested, and it is for the injury thus sustained, that the plaintiff in this case, secured the payment of thirty-six thousand dollars to her as the administratrix of William B. Buchanan. The bill filed by her asks a court of equity to take jurisdiction, to direct and supervise the distribution of the fund among the parties whom the court may find to be entitled to participate therein according to the proportion and rule which it may declare should govern the same. The fund which has thus been brought into a court of equity for distribution among those legally and equitably entitled thereto, represents two claims generally known as "French spoliation claims." The origin and history of these claims — been set
124 forth in several of the reported cases, especially in Blagge vs. Balch, 162 U. S. 461, one of the most recent in which the Supreme Court of the United States has construed the acts of Congress relating to the subject-matter of this litigation, so that it will not be necessary here to do more than to say, that these claims arose out of illegal seizures and depredations by French cruisers upon American commerce. The persons who thus lost property and their descendants claimed that through the effect of a subsequent treaty between the United States and France, the former had assumed the payment of compensation for their losses. But it was not until 1885 that an act of Congress was passed providing that "such citizens of the United States, or their legal representatives, as had valid claims to indemnity upon the French government arising out of the illegal captures and confiscations prior to the ratification of the convention between the United States and the French Republic, concluded on the 13th September, 1800" might apply to the Court of Claims within two years from the passage of the act. It was especially provided, however, that the findings of the Court of Claims should not be conclusive either upon the United States or the claimants and that nothing in the act should be construed as committing the former to the payment of any such claims.

It was under the act of 20th January, 1885, that the plaintiff filed several petitions in the Court of Claims, based upon the seizure and confiscation of two vessels, the Jane and the Patapsco and their cargoes. The vessels were owned by Samuel Smith and James A. Buchanan in their individual capacities and cargoes by the firm of which they were the sole members.

Both losses occur-ed in 1798. It appears from the evidence that William B. Buchanan the plaintiff's intestate was not born until 1795, so that he was only three years old when the losses occurred, and can hardly be presumed, in the absence of evidence, to have been a member of the firm at that time. If he was not a member of the firm when the losses were sustained he, of course, was not an "original sufferer," and it is contended by the defendants that he and his representatives are therefore excluded from claiming in *that character* and that Samuel Smith and James A. Buchanan who at *that time* were the sole partners of the firm which sustained the loss are the only "original sufferers."

It appears from the evidence that the plaintiff's intestate did not become a member of the firm until 1818. The court below held,

however, that inasmuch as the plaintiff had made the claim in the character of administratrix of William B. Buchanan surviving partner of the firm, and the fund had been paid to her in that capacity, the defendants are stopped to deny her pretensions and that therefore the fund in her hands should be divided into three equal parts, one of such equal parts to go and be distributed to the next of kin of each of the three partners of the firm. It was also held by the court below that the distribution should be made according to the provisions of the Maryland statute of distribution.

From the decree embodying these views all the defendants have appealed on the ground that the fund should be divided
125 equally between Samuel Smith and James A. Buchanan the original sufferers and the original members of the firm of S. Smith & Buchanan. The second appeal was taken by J. Louis Smith and others on the ground that the distribution should not be made under our statute *per stirpes* but that all are to take as a class equally.

The case was earnestly and exhaustively argued on both sides but it does not seem to us that any serious questions are presented by either appeal.

I. The *first* appeal involves the question whether William B. Buchanan is entitled to share in the distribution of the fund as one of the original sufferers, because he was erroneously supposed to have been a member of the firm of S. Smith & Buchanan in 1878 and because the plaintiff as his administratrix was allowed to collect the money in question, whereas the real claimant should have been the personal representatives of James A. Buchanan who was the surviving partner of the firm as it existed in 1798.

Aside from all other views it seems to us too clear for controversy that if it be conceded, as it must be under the evidence that the plaintiff's *interest* Wm. B. Buchanan was not one of the original sufferers, she will not be allowed in a court of equity to participate in the distribution, except as one of the next of kin of James A. Buchanan. For it is apparent not from the acts of Congress under which these claims have been recognised and paid by the Government, as well as by the most recent decision of the Supreme Court of the United States (Blagge *vs.* Balch *supra*,) that the money paid for losses sustained was intended as a gratuity to the next of kin of the original sufferers who shall be living at the time the act was passed viz., 3rd March 1899. The mere fact that the claim was filed by the plaintiff in her name and as administratrix, &c. is immaterial. The whole record shows beyond question that she represented with their consent all the parties who are now claiming against her.

But it is contended that the judgments and findings of the Court of Claims in connection with the action of Congress are conclusive, and that, therefore, all are bound by the decision of that court that the plaintiff was in fact the administratrix of Wm. B. Buchanan and that he was the survivor of the firm, and that therefore he was one of the original sufferers.

We cannot, however, agree to this view. On the contrary it seems

to us clear from a careful inspection of the record that the question as to whether the plaintiff was in fact the proper formal party to file the petition in the Court of Claims was never suggested to or considered by that court. Indeed it seems to have been conceded on all hands and properly so that she was the representative of the surviving member of a firm. But the mistake was in assuming that her intestate was a member of *the firm* as constituted at *the time* of the losses. Nor does it appear that this mistake was discovered until after the filing of the bill in this case, when it was learned from the testimony of the plaintiff that he was an infant only
126 three years old in 1798; and therefore could not have been a member of the firm of S. Smith & Buchanan when the losses were sustained. Nor do we think the act of Congress of 1899 appropriating money to pay these and other claims imparted to the reports or findings of the Court of Claims any element of finality except as to the amount of loss sustained by the original sufferers. In the case of Blagge *vs.* Balch, *supra*, Chief Judge Fuller thus quotes with approval from Buchanan *vs.* U. S. 24 Ct. of Cl. 74–81. When the amount of the claim has been determined and reported. It will then be within the legislative discretion.

(1.) To ascertain through the proper committees who are the persons who should receive the money; or

(2.) To provide for the ascertainment of that fact by additional legislation, or

(3.) To confide the money to the administrators trusting that they and the courts of which they are the officers and agents will distribute the funds among next of kin of the original claimants.

In our opinion Congress adopted the last course in passing the act of 1899, whereby money was appropriated and directed to be paid to the plaintiff as administratrix. In none of the cases relating to French spoliation claims, "under the act of 1885" has the Court of Claims "assumed to determine who were the next of kin of a deceased claimants. In other words, the court has not assumed to determine what persons are legally or equitably entitled to receive the money which Congress may hereafter appropriate for the discharge of these claims." Blagge *vs.* Balch, *supra*. And finally by the very terms of the act itself the findings are only advisory and do not fix or attempt to fix judicially the rights of any person. As was suggested in Buchanan *vs.* U. S. *supra*, Congress might have ascertained through the proper committees or have provided by legislation for the ascertainment of the beneficiaries, but they did not exercise that power by the act of 1899, which appropriated the money to pay the claims. The case of United States *vs.* Gilliatt, 164 U. S., 44, was relied on to show the conclusiveness of the finding of the Court of Claims in cases under the act of 1885 and of that court's certificate to the Treasurer of the United States as to the proper person to be paid. But an examination of that case will show that it is not in point. The Court of Claims in Gilliatt's case was acting under the specific act of August 23rd, 1894, which the Supreme Court held on appeal made the decision and certificate of the former court final, but at the same time declared that its findings

in cases like these now before us under the provisions of the act of 1885 are only advisory. We conclude, therefore, that there is nothing either in the finding and certificate of the Court of Claims or in the legislation of Congress which estops the defendants from showing who were the original sufferers, nor from showing that in point of fact Wm. B. Buchanan was not a partner of the firm of S. Smith & Buchanan in 1798 when its property was destroyed and the loss incurred.

127 II. We have already referred to the fact that Wm. B. Buchanan was born in 1795, and of course he could not have been in the ordinary sense of that term a partner in 1798. But in addition to this convincing fact it is shown that James A. Buchanan the junior member of the original firm, in a deposition made in insolvency proceedings in 1821 said his son Wm. B., was taken into the firm in 1818. In the same deposition he also said that certain old accounts which had been closed and had been unexpectedly collected had been used by his senior partner Samuel Smith and himself in equal portions. In the year 1820 the firm consisting of S. Smith, Jas. A. Buchanan and his son Wm. B. failed, and executed a deed of trust to Thomas Ellicott and Jonathan Meredith.

These trustees in a memorial addressed to the commissioners appointed under a treaty of 1819, stated *the* Samuel Smith and James A. Buchanan trading as the firm of S. Smith & Buchanan were in the year 1797 owner of one-half of the Jane and suffered the losses in question. The facts point strongly to the conclusion that up to the year 1818 Wm. B. Buchanan had no interest in the firm. In fact the only ground to sustain even a supposition to the contrary is the mistake made by the plaintiff and by those who conducted the case before the Court of Claims. If the mistake had been called to the attention of the Court of Claims the proceedings would undoubtedly have been amended or as in the case of "*The Clio*" *27 Ct. of Cl. 221* that court would have said that inasmuch as it appeared that the administratrix in fact represented the descendants and next of kin of the original claimants and that she was prosecuting the claim with their knowledge and at their request, the technical error of taking out letters of administration upon the estate of a subsequent member of the firm, that is of one who was not a member of the firm when the loss was sustained " will not preclude the court from rendering a decision upon the merits and reporting the case to Congress." Indeed all the decisions relating to these spoliation claims appear to rest upon the rule that as provided by the jurisdictional act of January 20th 1885 the Court of Claims was to examine and determine the *validity* and *amount* of all claims included within the description contained in the act, and, as was said in United States *vs.* Gilliatt, 164 U. S. 45 the particular person to whom the appropriation already made by Congress was to be paid was a subsidiary question.

If however, as we hold, the defendants are not estopped by the findings or certificates of the Court of Claims and if as we have also held there is nothing in the acts of Congress to prevent the courts of this State from now correcting the mistake made by those

who instituted the proceedings, can there be any doubt that when the plaintiff has come into a court of equity asking that the fund may be distributed to those entitled, that the distribution will be made to the real beneficiaries namely the next of kin of Samuel Smith and James A. Buchanan living March 3rd, 1899, the date of the passage of the act making the appropriation? As is said by counsel for defendants in their brief, the plaintiff "asks equitable relief, puts the fund under the jurisdiction of the court of equity
128 and prays it may be distributed according to equity." To make the distribution in the manner now suggested by her counsel on her behalf and divert one-third of the fund away from the lawful course and appropriate it to herself and her brother, because of the accidental advantage given by her position as collector and trustee, and the manner in which the proceeding for its collection was by mistake, shaped by counsel who intended to act for the common benefit of all interested would enable a trustee to abuse her position and commit a breach of trust. It would make the court go contrary to the rule under which its doors are opened that he who seeks equity must do equity. It would not accord with the prayer of the bill.

III. The question as to the proper rule of distribution of the fund is presented by the second appeal and we will briefly consider it. It would seem, however, that since the decision of the Supreme Court of the United States in the case of Blagge *vs.* Balch, *supra* construing words in act of 1891 precisely the same as those in act of 1899 there can be little or no room for further discussion upon this subject. It was there said that Congress in order to reach the next of kin of the original sufferers, capable of taking at the time of distribution, on *principals* universally accepted as the most just and equitable, intended next of kin according to the statutes of distribution of the respective States of the domicile of the original sufferers. The Supreme Court of the United States having therefore so clearly declared what is the proper construction of the act of Congress it is our duty to follow it and the result is that the fund must be distributed according to the provisions of our statute of distribution *per stirpes* and not *per capita*.

IV. It appears from the evidence that one of Samuel Smith's daughters, Mary Buchanan Smith married a British subject John Man-field and resided in England until her death. Her husband is also dead. They left a number of children surviving them, but how many, if any, are now alive is not known. The question whether the descendants of Mrs. Mansfield are entitled to share in the distribution of the fund was not passed upon by the court below, and is not properly before us on these appeals, although counsel representing some of the defendants argued it both in their brief and orally. When the cause is remanded this question may properly be presented to and passed on by the court below.

It follows that the decree appealed from must be reversed in so far as it directs the fund to be divided into three equal parts and directs one of those parts to be distributed to Wm. B. Buchanan and affirmed as to the rule of distribution adopted.

Decree reversed in part and affirmed in part. Cause remanded, costs to be paid out of fund.

129 Court of Appeals of Maryland, January Term, 1901.

LAURA PATTERSON, SIDNEY T. DYER, and ELISHA DYER, JR.,
vs.
ESTHER S. BUCHANAN, Administratrix, *et al.*

J. LOUIS SMITH ET AL.
vs.
ESTHER S. BUCHANAN, Administratrix, *et al.*

The appeal in this case standing ready for hearing was argued by counsel for the respective parties, and the proceedings have since been considered by the court.

It is thereupon, this seventeenth day of January A. D. 1901 by the court of appeals of Maryland, and by the authority thereof, adjudged ordered and decreed that the decree of the circuit court number two, of Baltimore city made in this cause on the twenty-eighth day of June in the year nineteen hundred, be and the same is hereby affirmed in part and reversed in part, and the cause remanded to the end that further proceedings may be had in conformity with the opinion of this court, the costs to be paid out of the fund to be distributed.

JAS. McSHERRY.
DAVID FOWLER.
JOHN P. BRISCOE.
A. HUNTER BOYD.
JAMES A. PEARCE.
SAM'L D. SCHMUCKER.
I. THOMAS JONES.

Pattison's *et al.* costs in court of appeals	$112 25
Smith *et al.* costs in court of appeals	90 40
Buchanan *et al.* costs in court of appeals	84 60

STATE OF MARYLAND, *sct:*

I, J. Frank Ford, clerk of the court of appeals of Maryland do hereby certify, that the foregoing is truly taken from the record of proceedings of the said court of appeals.

In testimony whereof, I have hereunto set my hand as clerk, [L. S.] and affixed the seal of the said court of appeals, this twenty-fifth day of February, A. D. 1901.

J. FRANK FORD,
Clerk Court of Appeals of Maryland.

130 *Petition of Virginia A. Smith, Administratrix of J. Louis Smith, to be Substituted as a Party Defendant.*

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON CAREY BUCHANAN ET AL.

To the honorable the judge of said court:

Your petitioner, Virginia A. Smith, respectfully shows to the court:

That on the — day of December, 1900, J. Louis Smith, one of the defendants in this cause, died, and that on the 27th day of March, 1901, your petitioner was duly appointed by the orphans' court of Baltimore city, administratrix of the said J. Louis Smith, as will more fully appear from the certificate of the orphans' court filed herewith.

Wherefore your petitioner prays that she, as administratrix of the said J. Louis Smith, be substituted for the said J. Louis Smith as one of the defendants herein.

And your petitioner will ever pray and etc.

FRANK P. CLARK,
Sol. for Petitioner.

Certificate of Orphans' Court of Baltimore City,

(Filed with aforegoing petition.)

THE STATE OF MARYLAND, *Baltimore City,* } *sc:*

The subscriber, register of wills for Baltimore city, doth hereby certify that it appears by the records in his office that letters of administration of all the goods, chattels, credits and personal estate of J. Louis Smith, deceased, were on the 27th day of March in the year of our Lord one thousand nine hundred and one granted unto Virginia A. Smith, the ex-cutrix by the last will and testament of the said deceased appointed.

In testimony whereof, I hereunto subscribe my name and [L. S.] affix the seal of my office this 15th day of April, in the year of our Lord nineteen hundred and one.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

Order of Court on Aforegoing Petition.

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON CAREY BUCHANAN ET AL.

131 Ordered on the foregoing petition by the circuit court No. 2, of Baltimore city, on this 16th day of April, 1901, that Virginia A. Smith, administratrix of J. Louis Smith, be, and she is hereby made a defendant in this cause in lieu of the said J. Louis Smith, deceased.

J. UPSHUR DENNIS.

Petition of Mary Coles Carter, Administratrix d. b. n., c. t. a., of Samuel Smith, Deceased, to be Substituted as a Party Defendant, etc.

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON CAREY BUCHANAN ET AL.

To the honorable the judge of said court:

Your petitioner, Mary Coles Carter, one of the defendants in this cause, respectfully shows to the court:

That on the — day of December 1900, J. Louis Smith adm. *d. b. n. c. t. a.* of Samuel Smith deceased, also one of the defendants in this cause, died, and that on the 27th day of March 1901, your petitioner was duly appointed by the orphans' court of Baltimore city in his place as administratrix *d. b. n. c. t. a.* of the said Samuel Smith as will more fully appear from the certificate of the orphans' court filed herewith.

Wherefore your petitioner prays that she as administratrix *d. b. n. c. t. a.* of the said Samuel Smith be substituted for J. Louis Smith. adm. *d. b. n. c. t. a.* of the said Samuel Smith as one of the defendants herein.

And your petitioner will ever pray.

FRANK P. CLARK,
Solicitor for Petitioner.

Certificate of the Orphans' Court of Baltimore City.

(Filed with aforegoing petition.)

STATE OF MARYLAND, *Baltimore City,* } *sc:*

The subscriber register of wills for Baltimore city doth hereby certify that it appears by the records in his office that letters of administration, *de bonis non* with the will annexed of all the goods, chattels, credits and personal estate of Samuel Smith, deceased, was on the 27th day of March in the year of our Lord one thousand nine hundred and one granted and committed unto Mary C. Carter who was then and there appointed administratrix *de bonis non* with the will annexed of the said deceased.

132 In testimony whereof, I hereunto subscribe my name and affix the seal of my office this 15th day of April in the year [L. S.] of our Lord nineteen hundred and one.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

Order of Court Passed on the Aforegoing Petition.

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON CAREY BUCHANAN ET AL.

Ordered by the foregoing petition by the circuit court No. 2 of Baltimore city on this 16th day of April, 1901, that Mary Coles Carter administratrix *d. b. n. c. t. a.* of Samuel Smith be, and she is hereby made a defendant in this cause in lieu of the said Robert Carter Smith deceased, adm. *d. b. n. c. t. a.* of Samuel Smith deceased.

J. UPSHUR DENNIS.

Petition of Mary Coles Carter to be Substituted as a Party Defendant, etc.

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON CAREY BUCHANAN ET AL.

To the honorable the judge of said court:

Your petitioner Mary Coles Carter, one of the defendants in this cause respectively shows to the court:

That on the 13th day of February, 1900, Robert Carter Smith,

also one of the defendants in this cause died, and that your petitioner was duly appointed by the orphans' court of Baltimore city administratrix of the said Robert Carter Smith as will more fully appear from the certificate of the said orphans' court filed herewith.

Wherefore your petitioner prays that she as administratrix of the said Robert Carter Smith be substituted for him as one of the defendants herein.

And your petitioner will ever pray &c.

FRANK P. CLARK,
Sol. for Petitioner.

Certificate of Orphans' Court of Baltimore City.

(Filed with aforegoing petition.)

THE STATE OF MARYLAND, } *sc:*
Baltimore City, }

The subscriber, register of wills for Baltimore city, doth
133 hereby certify that it appears by the records in his office that letters of administration of all the goods, chattels credits and personal estate of Robert Carter Smith, deceased, were on the 12th day of March, in the year of our Lord one thousand nine hundred and one, granted and committed unto Mary C. Carter, who was then and there appointed administratrix of said deceased.

In testimony whereof, I hereunto subscribe my name and
[L. S.] affix the seal of said court and office this 15th day of April, in the year of our Lord nineteen hundred and one.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

Order of Court on Aforegoing Petition.

(Filed 16th April, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL. }
vs.
WILSON CAREY BUCHANAN ET AL. }

Ordered on the foregoing petition by the circuit court No. 2 of Baltimore city on this 16th day of April, 1901, that Mary Coles Carter, administratrix of Robert Carter Smith, be and she is hereby made a defendant in this cause in lien of the said Robert Carter Smith, deceased.

J. UPSHUR DENNIS.

Decree.

(Filed 26th June, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

The decree heretofore passed in this cause on the 28th day of June, 1900, having been reversed in part and affirmed in part by the court of appeals, and the cause remanded to the end that further proceedings may be had in conformity with the opinion of the court of appeals as appears by the proceedings, and the said cause coming on to be heard, the counsel of the parties were heard and all the proceedings were read and carefully considered.

It is thereupon this 26th day of June, 1901, by the circuit court No. 2 of Baltimore city, adjudged ordered and decreed in conformity with the said opinion of the court of appeals that the said fund in the hands of the plaintiff be divided into two equal parts, one whereof shall be distributed among the descendants living at the time of the passage of the act of Congress entitled "An act for the allowance of certain claims under the provisions of the act
134 approved March 3rd eighteen hundred and eighty-three, and commonly known as the Bowman act and for other purposes" approved March 3rd, 1899, of Samuel Smith, deceased, who was formerly a partner in the firm of S. Smith & Buchanan, and the personal representatives of such of them, the said then living descendants as have died since the passage of the said act; and the other of the said two equal parts of the said fund shall be distributed among the descendants living at the time of the passage of the said act of Congress of James A. Buchanan, deceased, who together with the said Samuel Smith composed the firm of S. Smith and Buchanan at the time of the seizure by the French mentioned in these proceedings.

And it is further adjudged and decreed that William B. Buchanan, not having been one of the original sufferers, his next of kin as such are not entitled to share in the distribution.

And it is further adjudged, ordered and decreed that the distribution of the aforesaid moieties respectively of the said whole fund for distribution shall be made in the manner following, that is to say, the part or moiety so allot-ed to descendants of the said Samuel Smith, deceased, shall be subdivided *unto* twenty-four equal parts, twelve whereof shall be distributed as follows, viz:

To the defendant Mary Coles Carter one of said twenty-four equal parts,

To the defendant Sallie R. Carter one of said twenty-four equal parts,

To the defendant Cary Ann Fink one of said twenty-four equal parts,

The the defendant Kate Prather Nicholas one of said twenty-four equal parts,

To the defendant Sarah Nicholas one of said twenty-four equal parts,

To the defendant Virginia A. Smith administratrix of the original defendant J. Louis Smith, who has died since the institution of this suit, three of the said twentyfour equal parts,

And to the defendant Mary Coles Carter, administratrix of the original defendant Robert Carter Smith, who has died since the institution of this suit, three of the said twenty-four equal parts.

And twelve of said twenty-four equal parts of the said moiety or half part of the said entire fund shall be equally divided between the defendant Laura Patterson and the defendant Sidney T. Dyer, that is to say, to the said Laura Patterson six of said twenty-four equal parts, and to the said Sidney T. Dyer, six of said twenty-four equal parts.

And the other one equal moiety or half part of the entire fund for distribution being the same allot-ed to the descendants of the said James A. Buchanan, deceased, shall be subdivided into thirty-two equal parts which shall be distributed as follows:

To the plaintiff Esther S. Buchanan eight of the said thirty-two parts,

135 To the defendant Wilson C. Buchanan eight of the said thirty-two parts.

To the defendant Richard P. Buchanan one of the said thirty-two parts.

To the defendant Esther Tyson one of the said thirty-two parts.

To the defendant Laura Wainwright one of said thirty-two parts.

To the defendant Eugene Lentelhon Jr. one of said thirty-two parts.

To the defendant Clement C. Smith four of said thirty-two parts.

To the defendant Ellen Buchanan four of said thirty-two parts.

To the defendant Marie Buchanan two of said thirty-two parts.

And to the defendant Charles M. Buchanan two of said thirty-two parts.

And it is further ordered and decreed that the costs of this cause incurred on both sides in this court and the costs both of appellants and appellees in the court of appeals upon said former appeals shall first be paid out of the fund before the making of the said distribution.

And it is further ordered and decreed that this cause be referred to an auditor to state an account in conformity herewith.

J. UPSHUR DENNIS.

Order for Appeal on Behalf of Esther S. Buchanan Individually and Administratrix of William B. Buchanan, Deceased, and of Wilson Cary Buchanan, from Decree Passed 26th June, 1901.

(Filed 27th June, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Mr. Clerk:

Enter an appeal on behalf of Esther S. Buchanan, individually and as administratrix of William B. Buchanan deceased and of Wilson Cary Buchanan from the decree passed in this cause on the twenty-sixth day of June, 1901, to the next court of appeals of Maryland.

TAYLOR & KEECH,
Solicitors for Appellants.
HERBERT B. STIMPSON,
Solicitor for Wilson Carey Buchanan.

STATE OF MARYLAND, *City of Baltimore*, *To wit:*

June 27, 1901.—This day personally appeared Edward P. Keech and made oath in due form of law on behalf of the above-
136 named appellants that this appeal is not taken for delay and that he is authorized to make this affidavit.

ALFRED J. SCHULTZ, *Clerk.*

Appellants' Order for Making Up Record.

(Filed 27th June, 1901.)

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN ET AL.

Mr. Clerk:

In making up the record to be transmitted to the court of appeals of Maryland, on the appeal of Esther S. Buchanan, individually and as *of* administratrix of William B. Buchanan, deceased, of William Carey Buchanan from the decree entered in this cause on the twenty-sixth day of June, 1901, omit from the same all papers and proceedings contained in the transcript of the record heretofore transmitted to the court of appeals in the above-entitled cause on the two appeals of J. Louis Smith *et al.*, and Laura Patterson, *et al.*, from the decree entered herein on the 28th day of June, 1900, according to the Code of Public General Laws of this State, article 5

section 41 etc.; include in the same, however, the following additional paper and proceedings:—

1. Opinion and mandate of court of appeals filed herein Feb. 28, 1901.
2. Petition of Virginia A. Smith, administratrix of J. Louis Smith and order of court thereon filed April 16, 1901, and any exhibits accompanying same.
3. Petition of Mary Coles Carter administratrix of Samuel Smith, deceased and order thereon filed April 16, 1901 and any exhibit accompanying same.
4. Petition of Mary Coles Carter administratrix of Robert Carter Smith, deceased, and order thereon filed April 16—1901 and any exhibit accompany- same.
5. Decree herein passed June 26—1901—
6. Order of appeal filed June 27—1901.
7. This order filed June 27—1901

HERBERT B. STIMPSON,
TAYLOR & KEECH,
Solicitors for Appellants.

Which said appeal being by the court here, also granted, it is thereupon ordered by the court here that a transcript of the record of proceedings in the case aforesaid be transmitted to the court of appeals of the State of Maryland in accordance with order of appellants' solicitors and the same is transmitted accordingly.

Test: ALFRED J. SCHULTZ, *Clerk.*

137 In testimony whereof that the foregoing is a full and true transcript of the aforegoing papers taken from the record of proceedings in the circuit court No. 2 of Baltimore city in the cause therein mentioned.

I hereto set my hand and affix the seal of the said (Seal's place.) circuit court No. 2 of Baltimore city this 18th day of July in the year of our Lord nineteen hundred and one.

Test: ALFRED J. SCHULTZ, *Clerk.*

And now come into the court of appeals here, as well the said Esther S. Buchanan individually and as administratrix of William B. Buchanan and Wilson Cary Buchanan by Messrs. Taylor, Keech and Herbert B. Stimpson her attorneys, as the said Laura Patterson and others by Arthur W. Machen, Arthur W. Machen, Jr. and Frank P. Clark their attorneys and thereupon, on motion of the said Laura Patterson and others by their attorneys aforesaid, it is ruled by the court here, that the said Esther S. Buchanan individually and
138 as administratrix of William B. Buchanan and Wilson Cary Buchanan assign the errors in the record of proceedings aforesaid, or in the giving the judgment aforesaid so as aforesaid brought before the court of appeals here for correcting the errors supposed to be therein, or judgment by the court of appeals here, will be entered against them in default thereof; and the said Esther S. Buchanan

individually and as administratrix &c. by her attorneys aforesaid, says that in the record of proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit; that by the record aforesaid, it appears that the judgment aforesaid, in the plea aforesaid given, was given for the said Laura Patterson and others against the said Esther S. Buchanan &c., when by the law of the land, that judgment ought to have been given for the said Esther S. Buchanan &c. against the said Laura Patterson and others, therefore, in that there is manifest
139 error, and she prays that the judgment aforesaid for that error and others, being in the record of proceedings aforesaid, may be reversed, annulled, and held entirely as void, and that she the said Esther S. Buchanan, &c. may be restored to all things which she hath lost by occasion of the said judgment and that the said Laura Patterson and others may rejoin to the errors aforesaid, and so forth; and thereupon it is ruled by the court of appeals here, that the said Laura Patterson *et al.* join in the errors by the said Esther S. Buchanan, &c. above assigned in the record of proceedings aforesaid, or judgment by the court of appeals here, will be rendered against them in default thereof; and the said Laura Patterson and others by their attorneys aforesaid, say there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid, and they pray that the court of appeals here will
140 proceed to the examination as well of the record of proceedings aforesaid, as of the matters aforesaid, by the said Esther S. Buchanan, &c. above for error assigned and that the said judgment may be in all things affirmed, and so forth; thereupon further process of and upon the premises, between the parties aforesaid is, by virtue of an act of assembly in such cases made and provided, continued before the court of appeals here until the second Monday in January next; and now at this day, to wit, the said second Monday in January, being the 13th day of the said month, in the year of our Lord one thousand nine hundred and two come again into the court of appeals here, the parties aforesaid by their attorney aforesaid.

Whereupon as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said Esther S. Buchanan individually and as administratrix of William B. Buchanan and Wilson Cary Buchanan above for error assigned, being seen, and by the court of appeals here fully understood,
141 and mature deliberation thereupon had, for that it appears to the court of appeals here, that there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid: Therefore it is considered by the court of appeals here, that the judgment aforesaid, given in form aforesaid, be in all things affirmed and stand in full force and effect, the said causes for error above assigned and alleged in anywise, notwithstanding. And it is further considered by the court of appeals here, that the said Laura Patterson and others have execution against the said Esther S. Buchanan, &c. as well for the costs and charges aforesaid adjudged unto them in the said circuit court No. 2 of Baltimore city

as also the sum of — adjudged unto the said Laura Patterson and others by the court of appeals here, on their assent for their costs and charges which they have sustained by occasion of the delay of the execution of the judgment aforesaid, by pretext of the
142 prosecution of the said appeal by the said Esther S. Buchanan &c. for the correcting of errors of and upon the premises as aforesaid, prosecuted, &c.

And on the 30th day of January, A. D. 1902, was filed in the office of the clerk of the court of appeals of Maryland a certain opinion in the words and figures following to wit:

143 Court of Appeals of Maryland, January Term, 1902.

ESTHER S. BUCHANAN ET AL.
vs.
LAURA PATTERSON ET AL.

Filed January 30th, 1902.

Judge JONES delivered the opinion of the court.

This case was heretofore before this court with reference to questions raised as to who were entitled to participate in the fund then in the hands of Esther S. Buchanan, administratrix of William B. Buchanan by reason of an appropriation to her as such administratrix by the act of Congress of 1899 appropriating moneys to pay French spoliation claims, and as to the rule for distribution to be observed in ascertaining the shares of those entitled to participate therein (see case of Patterson and others *vs.* Buchanan adm'r &c., 92 Md. 334). Upon the first appeal the decree of the court below
144 was reversed in part and affirmed in part and the case remanded for a decree in accordance with the opinion of this court. This is an appeal from the decree passed by that court upon the remand. The case was instituted by Esther S. Buchanan individually and as administratrix of William B. Buchanan and administratrix *d. b. n., c. t. a.* of James A. Buchanan to put the funds in her hands under the jurisdiction of a court of equity and get the direction of the court in making distribution thereof. Esther S. Buchanan and Wilson C. Buchanan her co-appellant here are children of William B. Buchanan and grandchildren of James A. Buchanan. The money to be distributed was appropriated for payment of a so-called French spoliation claim—the losses giving rise to the claim having been sustained by the firm of S. Smith & Buchanan. This firm was at first composed of Smith and James A. Buchanan, and later of these two and William B. Buchanan who survived the other members of the firm. Because
145 of his being the surviving member of this firm the administratrix of William B. Buchanan presented and was paid the claim for the losses of the firm. Upon the former appeal this court decided, that the evidence in the cause showing that William B. Buchanan was not a member of the partnership when the losses occurred for which the appropriation in hand was made, his next of

kin, as such, were not entitled to share in the fund to be distributed. Accordingly by the decree passed upon the remand of the case the next of kin of William B. Buchanan were not admitted, as such, to shares of the fund distributed; and the same was distributed wholly to the next of kin of the other two members of the partnership, who were living at the date of the decree, and to the administrators of two of these next of kin who had died since the institution of
146 the proceedings in the cause and prior to the decree. The only next of kin of William B. Buchanan, who were living at the date of the act making the appropriation in question, were the appellants here Esther S. Buchanan and Wilson C. Buchanan, her brother. When the proceedings in this cause were instituted for the purposes indicated Wilson C. Buchanan was placed upon the docket as a defendant, and under the bill process went against him as such. When the proceedings culminated in the decree passed by the lower court under the directions of this court contained in its former opinion the appellants here united in an order of appeal from the decree as follows

In the Circuit Court No. 2 of Baltimore City.

ESTHER S. BUCHANAN ET AL.
vs.
WILSON C. BUCHANAN.

"Mr. Clerk:

147 Enter an appeal on behalf of Esther S. Buchanan, individually and as administratrix of William B. Buchanan deceased, and of Wilson Cary Buchanan from the decree passed in this cause on the twenty-sixth day of June 1901, to the next court of appeals of Maryland"—which was signed by their respective solicitors. It is insisted here on behalf of the appellees that the appeal thus brought up ought to be dismissed.

1st. Because it is a joint appeal of a plaintiff and a defendant.

2nd. Because Esther S. Buchanan is both appellant and appellee—appellant in her own right and as administratrix of William B. Buchanan and appellee as administratrix of James A. Buchanan.

It is provided by our Code art. 5 sec. 24 that "an appeal shall be allowed from any final decree or order in the nature of a final decree, passed by a court of equity, by any one or more of the
148 persons parties to the suit, with or without the assent or joinder of plaintiffs or codefendants in such appeal: provided that if the court of appeals shall affirm the decree of the court below, they shall not award costs of the appeal against any one except the appellant." This law was enacted in its present form in 1864 (see act 1864 chap. 156) and shortly after and probably in consequence of the decision of this court in the case of Lovejoy *vs.* Ireland 17 Md. 525 in which it was held that in a suit in equity in which there had been a decree against two or more defendants jointly one or more of such defendants could not appeal from the decree without joining all of their co-defendants unless after summons and severance. The statute not

only provided against the recurrence of the hardships that might at any time arise from the rule of practice which was
149 enforced in the case just referred to, but also indicated a policy of the law to disembarrass the valuable right of appeal, and to prevent the obstruction of the rights by the use of technical restrictions upon its exercise: The courts should administer the statute in the spirit of this policy. In a case of the character of the one at bar all the parties thereto are in a sense actors. They are not before the court, primarily at least, for the purpose of asserting and enforcing rights on one side, which are denied and resisted on the other; but for the common object of procuring an orderly and authoritative distribution among them of a fund in which they have interests thus to be ascertained and set apart. The placing of the parties upon the docket and their classification into plaintiffs and defendants are to a great extent matters of arbitrary arrangement; and are determined more from considerations of convenience
150 than from those which rules of practice ordinarily require to be observed in arranging parties to a suit. It would be difficult, indeed, and often impracticable to so arrange or classify parties, in a proceeding such as this, to preserve throughout the adjudication of questions pertaining to their rights, the adverse attitude indicated by the positions assigned them in the suit as plaintiffs or defendants. It frequently occurs that those who may be assigned adverse attitudes in the proceedings of the institution thereof are afterwards brought together by a common interest either in maintaining or questioning matters of adjudication in which they have a joint or common concern. To insist upon a severe exactness in maintaining in such cases the technical relation of the parties to the record irrespective of their real relations to any controverted
151 matter would be to embarrass them in carrying on the litigation and hinder them in their substantial rights.

Now there is no doubt that in the state of case that we have here both of the appellants in their individual capacities were affected by the decree below in such a manner as to entitle them to an appeal therefrom. It would seem to be altogether immaterial whether in prosecuting such appeal they gave such a separate order or united through their respective counsel in one order of appeal. In either case the matters to be presented here upon the appeal would be presented in the one record according to accepted and recognized practice; and as the interests involved, as to both the individual appellants, are precisely the same; and the questions to be determined are identical, making the determination thereof as to one the same as that as to the other; and as they have been affected in the same way and in the same right by the decree appealed from and by the same part of the decree thus mak-
152 ing their interest in the appeal in every aspect identical there certainly can be nothing substantial in the objection urged that the counsel for the parties appealing united in the one order. The same may be said of the uniting in the same order of one of the appellants in her representative capacity. The individual appellants were all the next of kin of William B. Buchanan and represented the entire

interest in the fund which was being distributed in the court below claimed by title under him. The appellant administratrix represented that same interest, and her appeal presented the same identity as to questions to be determined, called for the same identity of decision and was from the same part or feature of the decree below as was the appeal of the individual appellants. Parties appealing under the circumstances presented by this case, and having the same common cause of appeal as exists here are not appealing against
153 each other. There is no necessity therefore for cross-appeals notwithstanding they may be on opposite sides of the docket in the trial court. No good reason can be assigned why there should be separate appeals; nor why in the interest of good practice they should not unite in the one order of appeal. The other ground assigned for dismissing the appeal, that one of the appellants, is both appellant and appellees is equally untenable. The appellant referred to appeared on the docket below in her individual capacity, as administratrix *d. b. n. c. t. a.* of one party and as administratrix of another. That is she appeared in three several capacities in each of which she was in contemplation of law and for the purposes of the particular capacity a different person with, distinctive rights, powers and duties pertaining to each. In this sense she was co-plaintiff with herself. She had the right to appeal individ-
154 ually and the right to do so in either or both of her representative capacities. Littig *vs.* Hance 81 Md. 416. In appealing in one or more of these capacities without uniting them all in the appeal she was within the very letter as well as the spirit of the statute we have quoted which provides for an appeal by one or more plaintiffs or codefendants without joining the coplaintiffs or codefendants. We see no ground for dismissing the appeal. We do not think it necessary to review and criticise authorities referred to in the argument of the case. We have found none of them much in point under the circumstances of this case. Those cited by the counsel for the appellees were cases in which there was no attempt to unite in the appeal interests that were antagonistic, or, as in the case of Owens *vs.* Crow 62 Md. 491, where circumstances showed the same will in control of both sides of the controversy. In this case the suit has been brought as this
155 court indicated in case of Owens *vs.* Crow *supra*, it should be. The plaintiff, who instituted the proceedings in her representative as well as her individual capacity, made parties thereto, all of those whose interests she represented and they were in court to protect their interests. We do not propose to discuss here again the merits of this case—we see no reason for disturbing the former decision upon the points there adjudicated nor to supplement in any way what was there said. We may say that an examination of the additional authorities in that connection to which our attention has been called by counsel for the appellants shows that they would have had no influence upon the decision of the questions determined on the former appeal. These are the cases of U. S. *vs.* Louisville 169 U. S. 249, and U. S. *vs.* Jordan 113 U. S. 418 and are both cases in

which a specific appropriation had been made by act of Con-
156 gress to a named and ascertained party, leaving the Govern-
ment officials nothing to do except to pay over the money so appropriated. In the case here Congress made an appropriation for the benefit of a class, and it was paid over to a trustee whose duty was to ascertain who were members of that class within the meaning of the act of appropriation. The jurisdiction of our courts to determine questions as to who were entitled to share in the appropriation grew out of this duty imposed upon the trustee.

We are confined in disposing of this appeal entirely to questions affecting the rights of the parties who have brought this appeal and not finding that the appellants have been prejudiced by the decree of the court below the same will be affirmed.

Decree affirmed with costs to the appellees.

And on the same day and year last mentioned the said court
157 of appeals filed the following decree, to wit:

Court of Appeals of Maryland, January Term, 1902.

ESTHER S. BUCHANAN ET AL.
vs.
LAURA PATTERSON ET AL.

The appeal in this case standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the court.

It is thereupon, this thirtieth day of January A. D. 1902, by the court of appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed that the decree of the circuit court number two of Baltimore city made in this cause on the twenty-sixth day of June in the year nineteen hundred and one be and the same is hereby affirmed with costs to the appellees.

JAS. McSHERRY.
DAVID FOWLER.
158 HENRY PAGE.
JAMES A. PEARCE.
SAM'L D. SCHMUCKER.
I. THOMAS JONES.

And afterwards to wit, Feb'y 17th, 1902, there was filed in said case certain bond in the words and figures following to wit:

Know all men by these presents, that we, Esther S. Buchanan, individually, and as administratrix of William B. Buchanan, deceased, and also on behalf of Wilson Cary Buchanan, as principal, and the Fidelity and Deposit Company of Maryland, a body corporate duly incorporated, as surety, are held and firmly bound unto Laura Patterson, Sidney T. Dyer and Elisha Dyer, Junior, her husband, Virginia A. Smith, executrix of J. Louis Smith, deceased, Mary Coles Carter, Sally Carter, Robert Smith Carter, Cary Ann Fink and Rudolph

Fink, her husband, Kate Prather Nicholas, Sarah Nicholas
159 Mary Coles Carter, administratrix *d. b. n. c. t. a.* of Samuel Smith, deceased, Mary Coles Carter, administratrix of Robert Carter Smith, deceased, Richard P. Buchanan, Esther B. Tyson and James W. Tyson, her husband, Laura B. Wainwright and J. Mayhew Wainwright, her husband, Clement C. Smith, Eugene Lentilhon, Junior, Ellen Buchanan, Marie Buchanan, Charles Buchanan, the unknown next of kin and personal representatives and distributees of Mary B. Smith, who married John Mansfield, any and all unknown next of kin and distributees claiming by, under or through the said William B. Buchanan, deceased, or the said James A. Buchanan, deceased, or the said Samuel Smith, deceased, and the unknown personal representatives, next of kin and distributees of Hetty Cary Martin and H. Newell Martin, and each of them, both now deceased, and Esther S. Buchanan, administratrix *d. b. n., c. t. a.*
160 of James A. Buchanan, deceased, in the full and just sum of one thousand dollars ($1,000), to be paid to the above-named obligees, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, or heirs, executors, administrators and successors, jointly and severally by these presents, Signed and sealed by the said Esther S. Buchanan, as hereinbefore set forth, and signed by the said Edwin Warfield president of said Fidelity and Deposit Company of Maryland, on behalf of said body corporate, and sealed with its seal, and dated this 7th day of February, in the year of our Lord one thousand nine hundred and two.

Whereas lately at a court of appeals of the State of Maryland in a suit depending in said court between the said Esther S. Buchanan, administratrix etc. and others, as appellants, and the said Laura Patterson and others, as appellees, a decree was rendered against the said Esther S. Buchanan, individually and
161 as administratrix of William B. Buchanan, deceased, and the said Wilson Cary Buchanan, and the said parties having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said obligees above named, citing and admonishing them to be and appear in a Supreme Court of the United States at Washington, within thirty days of the date hereof,

Now the condition of the above obligation is such, that if the said Esther S. Buchanan, individually, and as administratrix of William B. Buchanan, deceased, and Wilson Cary Buchanan, shall prosecute said writ of error to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

162 ESTHER S. BUCHANAN, [SEAL]
Individually and as Administratrix of William B. Buchanan, Deceased, and on Behalf of Wilson Cary Buchanan.

(Seal's place.) FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By EDWIN WARFIELD, *President.*

Sealed and delivered by the said Esther S. Buchanan, in presence of—

E. P. KEECH, JR.

Attest: THOS. L. BERRY,
Ass't Secretary.

Approved.

JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

163 STATE OF MARYLAND, *sct:*

I, Thomas Parran, clerk of the court of appeals of Maryland do hereby certify that the foregoing is a true transcript of the record and proceedings in the case of Esther S. Buchanan, &c., *vs.* Laura Patterson and others as the same remains on file in the clerk's office of the said court of appeals,

And I do further certify that the said court of appeals of Maryland is the highest court of law or equity in said State in which a decision can be had in said case.

Seal Court of Appeals, Maryland.

In testimony whereof, I have hereunto subscribed my name as clerk of the said court of appeals of Maryland, and affixed the seal of the said court, on the fifth day of March A. D. 1902.

THOMAS PARRAN,
Clerk Court of Appeals of Maryland.

Endorsed on cover: File No. 18,440. Maryland court of appeals. Term No. 266. Esther S. Buchanan, administratrix of William B. Buchanan, deceased; Esther S. Buchanan & Wilson Carey Buchanan, plaintiffs in error, *vs.* Laura Patterson, Sidney T. Dyer and Elisha Dyer, Jr., her husband, *et al.* Filed March 6th, 1902.